

Bill and Sponsors Statement identical to S621

COMMITTEE STATEMENT:	ASSEMBLY:	Yes
	SENATE:	No
FLOOR AMENDMENT STATEMENTS:		No
LEGISLATIVE FISCAL ESTIMATE:		No
VETO MESSAGE:		No
GOVERNOR'S PRESS RELEASE ON SIGNING:		Yes

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REPORTS:	No
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NEWSPAPER ARTICLES:	No

See: California Dealer Liability Act (Cal. Health and Safety Code, sec. 11700 et seq.)

SENATE, No. 621

STATE OF NEW JERSEY
209th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2000 SESSION

Sponsored by:

Senator JOHN J. MATHEUSSEN

District 4 (Camden and Gloucester)

SYNOPSIS

Establishes civil action against drug dealers.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT concerning civil actions against drug dealers and
2 supplementing Title 2C of the New Jersey Statutes.

3
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6
7 1. This act shall be known and may be cited as the "Drug Dealer
8 Liability Act."

9
10 2. The Legislature finds and declares:

11 a. Although the criminal justice system is an important weapon in
12 the battle against controlled dangerous substances, the civil justice
13 system can and must also be used. The civil justice system can provide
14 an avenue of compensation for those who have suffered harm as a
15 result of the marketing and distribution of controlled dangerous
16 substances. The persons who have joined the marketing of controlled
17 dangerous substances should bear the cost of the harm caused by that
18 market in the community.

19 b. The threat of liability under this act serves as an additional
20 deterrent to a recognizable segment of the network for marketing
21 controlled dangerous substances. Because of this threat, a person who
22 has assets unrelated to the sale of controlled dangerous substances,
23 who markets controlled dangerous substances at the workplace, who
24 encourages friends to become users, is likely to decide that the added
25 cost of entering the market is not worth the benefit. This is
26 particularly true for a first-time, casual dealer who has not yet made
27 substantial profits.

28 c. This act is intended to provide a mechanism whereby the costs
29 of the injuries caused by illegal drug use will be borne by those who
30 benefit from illegal drug dealing.

31 d. This act imposes liability against all participants in the marketing
32 of controlled dangerous substances, including small dealers,
33 particularly those in the workplace, who are not usually the focus of
34 criminal investigations. Small dealers increase the number of users and
35 ultimately are the people who become large dealers. It is these small
36 dealers who are most likely to be deterred by the threat of liability.

37
38 3. As used in this act:

39 a. "Marketing of controlled dangerous substances" means the illegal
40 distributing, dispensing, or possessing with intent to distribute, a
41 specified controlled dangerous substance.

42 b. "Individual user of controlled dangerous substance" means the
43 individual whose illegal use of a specified controlled dangerous
44 substance is the basis of an action brought under this act.

45 c. "Level 1 offense" means:

- 1 (1) possessing with intent to distribute less than four ounces of a
- 2 specified controlled dangerous substance as defined in this section;
- 3 (2) distributing or dispensing less than one ounce of a specified
- 4 controlled dangerous substance as defined in this section;
- 5 (3) possessing with intent to distribute 25 or more but less than 50
- 6 marijuana plants;
- 7 (4) possessing with intent to distribute less than four pounds of
- 8 marijuana, or
- 9 (5) distributing or dispensing more than 28.5 grams of marijuana.
- 10 d. "Level 2 offense" means:
- 11 (1) possessing with intent to distribute four ounces or more but
- 12 less than eight ounces of a specified controlled dangerous substance
- 13 as defined in this section;
- 14 (2) distributing or dispensing one ounce or more but less than two
- 15 ounces of a specified controlled dangerous substance as defined in this
- 16 section;
- 17 (3) possessing with intent to distribute 50 or more but less than 75
- 18 marijuana plants;
- 19 (4) possessing with intent to distribute four pounds or more but
- 20 less than eight pounds of marijuana, or
- 21 (5) distributing or dispensing more than one pound but less than
- 22 five pounds of marijuana.
- 23 e. "Level 3 offense" means:
- 24 (1) possessing with intent to distribute eight ounces or more but
- 25 less than 16 ounces of a specified controlled dangerous substance as
- 26 defined in this section;
- 27 (2) distributing or dispensing two ounces or more but less than
- 28 four ounces of a specified controlled dangerous substance as defined
- 29 in this section;
- 30 (3) possessing with intent to distribute 75 or more but less than
- 31 100 marijuana plants;
- 32 (4) possessing with intent to distribute eight pounds or more but
- 33 less than 16 pounds of marijuana, or
- 34 (5) distributing or dispensing more than five pounds but less than
- 35 10 pounds of marijuana.
- 36 f. "Level 4 offense" means:
- 37 (1) possessing with intent to distribute 16 ounces or more of a
- 38 specified controlled dangerous substance as defined in this section;
- 39 (2) distributing or dispensing four ounces or more of a specified
- 40 controlled dangerous substance as defined in this section;
- 41 (3) possessing with intent to distribute 100 or more marijuana
- 42 plants;
- 43 (4) possessing with intent to distribute 16 pounds or more of
- 44 marijuana, or
- 45 (5) distributing or dispensing more than 10 pounds of marijuana.

1 g. "Participate in the illegal marketing of controlled dangerous
2 substances" means to transport, import into this State, distribute,
3 dispense, sell, possess with intent to distribute, or offer to distribute
4 a controlled dangerous substance, in violation of any of the provisions
5 of chapter 35 of Title 2C of the New Jersey Statutes. "Participate in
6 the marketing of controlled dangerous substances" does not include
7 the purchase or receipt of a controlled dangerous substance for
8 personal use only.

9 h. "Person" means any natural person, association, partnership,
10 corporation or other entity.

11 i. "Period of illegal use" means, in relation to the individual user of
12 a controlled dangerous substance, the time of the individual's first
13 illegal use of a controlled dangerous substance to the accrual of the
14 cause of action.

15 j. "Place of illegal activity" means, in relation to the individual user
16 of a specified controlled dangerous substance, each county in which
17 the individual illegally possess or uses a specified controlled dangerous
18 substance.

19 k. "Place of participation" means, in relation to a defendant in an
20 action brought under this act, each county in which the defendant
21 participates in the marketing of controlled dangerous substances.

22 l. "Specified controlled dangerous substance" means heroin,
23 cocaine, lysergic acid diethylamide, phencyclidine, methamphetamine,
24 phenyl-2-propanone (P2P) and any other controlled dangerous
25 substance specified under the provisions of N.J.S.2C:35-5 as being
26 unlawful to manufacture, distribute, or dispense, or to possess or have
27 under a person's control with intent to manufacture, distribute or
28 dispense.

29

30 4. A person who knowingly participates in the illegal marketing of
31 controlled dangerous substances within this State is liable for damages,
32 as provided in this act, for injury resulting from an individual's illegal
33 use of a controlled dangerous substance.

34

35 5. a. Any of the following persons may bring an action for
36 damages caused by an individual's illegal use of a controlled dangerous
37 substance:

38 (1) A parent, legal guardian, child, spouse, or sibling of the
39 controlled dangerous substance user.

40 (2) An individual who was exposed to a controlled dangerous
41 substance in utero.

42 (3) An employer of the controlled dangerous substance user.

43 (4) A medical facility, insurer, employer, or other nongovernmental
44 entity that funded a drug treatment program or employee assistance
45 program for the controlled dangerous substance user or that otherwise
46 expended money on behalf of the controlled dangerous substance user.

1 (5) A person injured as a result of the reckless or negligent actions
2 of an individual user of a controlled dangerous substance.

3 No public entity, and no public agency other than a public hospital,
4 shall have a cause of action under this act.

5 b. A person entitled to bring an action under this act may seek
6 damages against:

7 (1) A person who distributed or dispensed a controlled dangerous
8 substance to the individual user of the controlled dangerous substance;
9 or

10 (2) A person who knowingly participated in the marketing of
11 controlled dangerous substances, if all of the following apply:

12 (a) The defendant's place of participation is situated in the same
13 county as the individual user's place of illegal activity;

14 (b) The defendant participated in the marketing of the same type
15 of controlled dangerous substances as those used by the individual
16 user;

17 (c) The defendant was previously convicted of an offense in the
18 State of New Jersey for that type of controlled dangerous substance;
19 and

20 (d) The defendant participated in the marketing of controlled
21 dangerous substances at any time during the period the individual user
22 unlawfully used the controlled dangerous substance.

23 c. A person entitled to bring an action under this section may
24 recover all of the following damages:

25 (1) Economic damages, including, but not limited to, the cost of
26 treatment and rehabilitation, medical expenses, loss of economic or
27 educational potential, loss of productivity, absenteeism, support
28 expenses, accidents or injury, and any other pecuniary loss proximately
29 caused by the use of a controlled dangerous substance.

30 (2) Noneconomic damages, including but not limited to physical
31 and emotional pain, suffering, physical impairment, physical
32 impairment, emotional distress, disfigurement, loss of enjoyment, loss
33 of companionship, services and consortium, and other nonpecuniary
34 losses proximately caused by an individual's use of a controlled
35 dangerous substance.

36 (3) Punitive damages.

37 (4) Reasonable attorney fees.

38 (5) Costs of suit, including, but not limited to, reasonable expenses
39 for expert testimony.

40
41 6. a. An individual user of a controlled dangerous substance may
42 bring an action for damages caused by the use of a controlled
43 dangerous substance only if all of the following conditions are met:

44 (1) The individual personally discloses to narcotics enforcement
45 authorities all of the information known to the individual regarding all
46 that individual's sources of controlled dangerous substances.

1 (2) The individual has not used a controlled dangerous substance
2 within the 30 days before filing the action.

3 (3) The individual continues to remain free of the use of an illegal
4 controlled substance throughout the pendency of the action.

5 b. An individual user entitled to bring an action under this section
6 may seek damages only from a person who transported, imported into
7 this State, distributed, dispensed, sold, possessed with intent to
8 distribute, or offered to distribute, in violation of any of the provisions
9 of chapter 35 of Title 2C of the New Jersey Statutes, the controlled
10 dangerous substance actually used by the individual user of a
11 controlled dangerous substance.

12 c. An individual user entitled to bring an action under this section
13 may recover only the following damages:

14 (1) Economic damages, including, but not limited to, the cost of
15 treatment, rehabilitation and medical expenses, loss of economic or
16 educational potential, loss of productivity, absenteeism, accidents or
17 injury, and any other pecuniary loss proximately caused by the person's
18 use of a controlled dangerous substance.

19 (2) Reasonable attorney fees.

20 (3) Costs of suit, including, but not limited to, reasonable expenses
21 for expert testimony.

22

23 7. a. A third party shall not pay damages awarded under this act,
24 or provide a defense or money for a defense, on behalf of an insured
25 under a contract of insurance or indemnification.

26 b. A cause of action authorized pursuant to this act may not be
27 assigned, either expressly, by subrogation, or by any other means,
28 directly or indirectly, to any public or publicly funded agency or
29 institution.

30

31 8. A person whose participation in the marketing of controlled
32 dangerous substances is grounds for liability pursuant to this act shall
33 be rebuttably presumed to be liable for damages incurred by the
34 plaintiff in the following percentages:

35 a. For a level 1 offense, 25 percent of the damages;

36 b. For a level 2 offense, 50 percent of the damages;

37 c. For a level 3 offense, 75 percent of the damages; and

38 d. For a level 4 offense, 100 percent of the damages.

39

40 9. a. Two or more persons may join in one action under this act as
41 plaintiffs if their respective actions have at least one market for
42 controlled dangerous substances in common and if any portion of the
43 period of use of a controlled dangerous substance overlaps with the
44 period of use of a controlled dangerous substance for every other
45 plaintiff.

1 b. Two or more persons may be joined in one action under this act
2 as defendants if those persons are liable to at least one plaintiff.

3
4 10. a. An action by an individual user of a controlled dangerous
5 substance is governed by the principles of comparative responsibility.
6 Comparative responsibility attributed to an individual user does not
7 bar the user's recovery but diminishes the award of damages
8 proportionately, according to the measure of responsibility attributed
9 to the user. The burden of proving comparative responsibility is on
10 the defendant, who shall prove comparative responsibility by clear and
11 convincing evidence.

12 b. Comparative responsibility shall not be attributed to a plaintiff
13 who is not an individual user of a controlled substance, unless that
14 plaintiff knowingly gave the individual user money for the purchase
15 of the controlled dangerous substance.

16
17 11. A person subject to liability under this act has a right of action
18 for contribution against another person subject to liability under this
19 act. Contribution may be enforced either in the original action or by
20 a separate action brought for that purpose. A plaintiff may seek
21 recovery in accordance with this act and other laws against a person
22 whom a defendant has asserted a right of contribution.

23
24 12. a. Proof of liability in an action brought under this act shall be
25 shown by clear and convincing evidence.

26 b. A person against whom recovery is sought who has been
27 convicted of a violation of N.J.S.2C:35-5, Manufacturing, Distributing
28 or Dispensing, or an equivalent offense under federal law or the law
29 of any other state, is estopped from denying illegal participation in the
30 market for controlled dangerous substances. If such conviction was
31 based upon the same type of controlled dangerous substance as that
32 used by the individual user, the conviction also constitutes prima facie
33 evidence of the person's participation in the marketing of controlled
34 dangerous substance user pursuant to this act.

35 c. The absence of a criminal conviction for a violation of
36 N.J.S.2C:35-5 or an equivalent offense under federal law or the law of
37 any other state does not bar recovery by a plaintiff bringing suit
38 pursuant to section 5 of this act.

39
40 13. A plaintiff under this act may request an ex parte prejudgment
41 attachment order from the court against all assets of a defendant
42 sufficient to satisfy a potential award.

43
44 14. a. A cause of action accrues under this act when a person has
45 reason to know of the harm from use of a controlled dangerous
46 substance that is the basis for the cause of action and has reason to

1 know that the use of a controlled dangerous substance is the cause of
2 the harm.

3 b. A claim under this act shall not be brought more than one year
4 after the defendant distributes, dispenses, or possesses with intent to
5 distribute, the controlled dangerous substance or more than one year
6 after the defendant is convicted of a crime involving controlled
7 dangerous substances, whichever is the later.

8
9 15. On motion by a governmental agency involved in an
10 investigation or prosecution involving a controlled dangerous
11 substance, an action brought under this act shall be stayed until the
12 completion of any underlying criminal investigation or prosecution.

13
14 16. No cause of action shall arise based on any act by a defendant
15 which occurred prior to the effective date of this act.

16
17 17. This act shall take effect immediately.

18

19

20

STATEMENT

21

22 This bill provides a civil remedy for damages to persons injured as
23 a result of the illegal use of controlled dangerous substances. These
24 persons include parents, employers, insurers, government entities, and
25 others who pay for drug treatment or employee assistance programs,
26 as well as infants injured as a result of exposure to illegal drugs in
27 utero. The bill is intended to shift, to the extent possible, the cost of
28 the damage caused by the illegal market for controlled dangerous
29 substances to those persons who profit from that market.

30 The bill provides that parents, children, spouses and siblings of drug
31 users, as well as employers of drug users, medical facilities which treat
32 the drug users, and persons injured by the drug users' actions, would
33 be entitled to sue drug dealers for civil damages.

34 Drug dealers would be liable for such damages in proportion to the
35 scale of their drug dealing, large-scale drug dealers being liable for all
36 damages and smaller-scale dealers being liable for a smaller percentage
37 of damages.

38 A drug seller would be liable even if he did not actually sell the
39 drugs to the particular user, as long as he sells the same type of drug
40 within the same county and has a past criminal conviction for a drug-
41 related offense.

42 However, a drug seller without any past criminal convictions for
43 drug-related offenses would still be liable for damages in those cases
44 where he is identified as having sold drugs to the particular user whose
45 drug use is the basis for the suit.

46 The person suing would be entitled to recover economic damages

1 and noneconomic damages, such as pain, suffering, and emotional
2 distress, as well as punitive damages and attorney fees.

3 In addition, the bill provides that under certain limited
4 circumstances the drug users themselves could sue their own dealers.
5 Users would be eligible to bring suit if they first disclose to law
6 enforcement authorities all of the information they know concerning
7 their sources, if they have not used a controlled dangerous substance
8 within the 30 days before filing the action, and if they continue to
9 remain free of CDS use during the pendency of the action. Drug users
10 would only be allowed to bring suit against the actual dealer who sold
11 them the drug. Users would be entitled to receive economic
12 (compensatory) damages and attorney fees, but could not receive
13 noneconomic damages (such as damages for pain and suffering).

14 The bill bars all government entities from suit, in order to avoid
15 possible constitutional issues of double jeopardy.

16 The bill is modeled on a statute enacted in the state of California in
17 September, 1996.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

SENATE, No. 621

STATE OF NEW JERSEY

DATED: JANUARY 31, 2000

The Senate Judiciary Committee reports favorably Senate Bill No. 621.

This bill would allow parents, children, spouses and siblings of illegal drug users, as well as employers of drug users, medical facilities which treat the drug users and persons injured by the drug users' actions, to sue drug dealers for civil damages. Individuals exposed to controlled dangerous substances in utero would also be entitled to seek damages.

Under the provisions of the bill, drug dealers would be liable for such damages in proportion to the scale of their drug dealing, large-scale drug dealers being liable for all damages and smaller-scale dealers being liable for a smaller percentage of damages.

A drug seller would be liable even if he did not actually sell the drugs to the particular user as long as he sells the same type of drug within the same county and has a past criminal conviction for a drug-related offense. A drug seller without any past criminal convictions for drug-related offenses would be liable for damages in those cases where he is identified as having sold drugs to the particular user whose drug use is the basis for the suit. Under the bill, the person suing would be entitled to recover economic damages and damages for pain and suffering and emotional distress, as well as punitive damages and attorney fees.

In addition, the bill provides that under certain limited circumstances the drug users themselves could sue their own dealers. Users would be eligible to bring suit if they first disclose to law enforcement authorities all of the information they know concerning their sources, if they have not used a controlled dangerous substance within 30 days before filing the action, and if they continue to remain free of CDS use during the pendency of the action. Drug users would only be allowed to bring suit against the actual dealer who sold them the drug. Users would be entitled to receive economic damages and attorney fees but could not receive noneconomic damages such as damages for pain and suffering.

In order to avoid possible constitutional issues of double jeopardy, the bill bars all government entities from suit.

This bill was prefiled for introduction in the 2000 session pending technical review. As reported, the bill includes the changes required by technical review which has been performed.

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

SENATE, No. 621

STATE OF NEW JERSEY

DATED: OCTOBER 16, 2000

The Assembly Judiciary Committee reports favorably Senate Bill No. 621.

This bill would allow parents, children, spouses and siblings of illegal drug users, as well as employers of drug users, medical facilities which treat the drug users and persons injured by the drug users' actions, to sue drug dealers for civil damages. Individuals exposed to controlled dangerous substances in utero would also be entitled to seek damages.

Under the provisions of the bill, drug dealers would be liable for such damages in proportion to the scale of their drug dealing, large-scale drug dealers being liable for all damages and smaller-scale dealers being liable for a smaller percentage of damages.

A drug seller would be liable even if he did not actually sell the drugs to the particular user as long as he sells the same type of drug within the same county and has a past criminal conviction for a drug-related offense. A drug seller without any past criminal convictions for drug-related offenses would be liable for damages in those cases where he is identified as having sold drugs to the particular user whose drug use is the basis for the suit. Under the bill, the person suing would be entitled to recover economic damages and damages for pain and suffering and emotional distress, as well as punitive damages and attorney fees.

In addition, the bill provides that under certain limited circumstances the drug users themselves could sue their own dealers. Users would be eligible to bring suit if they first disclose to law enforcement authorities all of the information they know concerning their sources, if they have not used a controlled dangerous substance within 30 days before filing the action, and if they continue to remain free of CDS use during the pendency of the action. Drug users would only be allowed to bring suit against the actual dealer who sold them the drug. Users would be entitled to receive economic damages and attorney fees but could not receive noneconomic damages such as damages for pain and suffering.

In order to avoid possible constitutional issues of double jeopardy, the bill bars all government entities from suit.

This bill is identical to Assembly, No. 918.

SENATE, No. 621

STATE OF NEW JERSEY 209th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2000 SESSION

Sponsored by:

Senator JOHN J. MATHEUSSEN

District 4 (Camden and Gloucester)

Senator NORMAN M. ROBERTSON

District 34 (Essex and Passaic)

Co-Sponsored by:

Senators Gormley, Bucco, Baer, Assemblyman Kelly, Assemblywoman Friscia, Assemblymen Blee, LeFevre and DiGaetano

SYNOPSIS

Establishes civil action against drug dealers.

CURRENT VERSION OF TEXT

As reported by the Senate Judiciary Committee with technical review.



(Sponsorship Updated As Of: 3/9/2001)

1 AN ACT concerning civil actions against drug dealers and
2 supplementing Title 2C of the New Jersey Statutes.

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4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

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7 1. This act shall be known and may be cited as the "Drug Dealer
8 Liability Act."

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10 2. The Legislature finds and declares:

11 a. Although the criminal justice system is an important weapon in
12 the battle against controlled dangerous substances, the civil justice
13 system can and must also be used. The civil justice system can provide
14 an avenue of compensation for those who have suffered harm as a
15 result of the marketing and distribution of controlled dangerous
16 substances. The persons who have joined the marketing of controlled
17 dangerous substances should bear the cost of the harm caused by that
18 market in the community.

19 b. The threat of liability under this act serves as an additional
20 deterrent to a recognizable segment of the network for marketing
21 controlled dangerous substances. Because of this threat, a person who
22 has assets unrelated to the sale of controlled dangerous substances,
23 who markets controlled dangerous substances at the workplace, who
24 encourages friends to become users, is likely to decide that the added
25 cost of entering the market is not worth the benefit. This is
26 particularly true for a first-time, casual dealer who has not yet made
27 substantial profits.

28 c. This act is intended to provide a mechanism whereby the costs
29 of the injuries caused by illegal drug use will be borne by those who
30 benefit from illegal drug dealing.

31 d. This act imposes liability against all participants in the marketing
32 of controlled dangerous substances, including small dealers,
33 particularly those in the workplace, who are not usually the focus of
34 criminal investigations. Small dealers increase the number of users and
35 ultimately are the people who become large dealers. It is these small
36 dealers who are most likely to be deterred by the threat of liability.

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38 3. As used in this act:

39 a. "Marketing of controlled dangerous substances" means the illegal
40 distributing, dispensing, or possessing with intent to distribute, a
41 specified controlled dangerous substance.

42 b. "Individual user of controlled dangerous substance" means the
43 individual whose illegal use of a specified controlled dangerous
44 substance is the basis of an action brought under this act.

- 1 c. "Level 1 offense" means:
- 2 (1) possessing with intent to distribute less than four ounces of a
3 specified controlled dangerous substance as defined in this section;
- 4 (2) distributing or dispensing less than one ounce of a specified
5 controlled dangerous substance as defined in this section;
- 6 (3) possessing with intent to distribute 25 or more but less than 50
7 marijuana plants;
- 8 (4) possessing with intent to distribute less than four pounds of
9 marijuana, or
- 10 (5) distributing or dispensing more than 28.5 grams of marijuana.
- 11 d. "Level 2 offense" means:
- 12 (1) possessing with intent to distribute four ounces or more but
13 less than eight ounces of a specified controlled dangerous substance
14 as defined in this section;
- 15 (2) distributing or dispensing one ounce or more but less than two
16 ounces of a specified controlled dangerous substance as defined in this
17 section;
- 18 (3) possessing with intent to distribute 50 or more but less than 75
19 marijuana plants;
- 20 (4) possessing with intent to distribute four pounds or more but
21 less than eight pounds of marijuana, or
- 22 (5) distributing or dispensing more than one pound but less than
23 five pounds of marijuana.
- 24 e. "Level 3 offense" means:
- 25 (1) possessing with intent to distribute eight ounces or more but
26 less than 16 ounces of a specified controlled dangerous substance as
27 defined in this section;
- 28 (2) distributing or dispensing two ounces or more but less than
29 four ounces of a specified controlled dangerous substance as defined
30 in this section;
- 31 (3) possessing with intent to distribute 75 or more but less than
32 100 marijuana plants;
- 33 (4) possessing with intent to distribute eight pounds or more but
34 less than 16 pounds of marijuana, or
- 35 (5) distributing or dispensing more than five pounds but less than
36 10 pounds of marijuana.
- 37 f. "Level 4 offense" means:
- 38 (1) possessing with intent to distribute 16 ounces or more of a
39 specified controlled dangerous substance as defined in this section;
- 40 (2) distributing or dispensing four ounces or more of a specified
41 controlled dangerous substance as defined in this section;
- 42 (3) possessing with intent to distribute 100 or more marijuana
43 plants;
- 44 (4) possessing with intent to distribute 16 pounds or more of
45 marijuana, or

1 (5) distributing or dispensing more than 10 pounds of marijuana.

2 g. "Participate in the illegal marketing of controlled dangerous
3 substances" means to transport, import into this State, distribute,
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11 corporation or other entity.

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13 a controlled dangerous substance, the time of the individual's first
14 illegal use of a controlled dangerous substance to the accrual of the
15 cause of action.

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17 of a specified controlled dangerous substance, each county in which
18 the individual illegally possess or uses a specified controlled dangerous
19 substance.

20 k. "Place of participation" means, in relation to a defendant in an
21 action brought under this act, each county in which the defendant
22 participates in the marketing of controlled dangerous substances.

23 l. "Specified controlled dangerous substance" means heroin,
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25 phenyl-2-propanone (P2P) and any other controlled dangerous
26 substance specified under the provisions of N.J.S.2C:35-5 as being
27 unlawful to manufacture, distribute, or dispense, or to possess or have
28 under a person's control with intent to manufacture, distribute or
29 dispense.

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31 4. A person who knowingly participates in the illegal marketing of
32 controlled dangerous substances within this State is liable for damages,
33 as provided in this act, for injury resulting from an individual's illegal
34 use of a controlled dangerous substance.

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36 5. a. Any of the following persons may bring an action for
37 damages caused by an individual's illegal use of a controlled dangerous
38 substance:

39 (1) A parent, legal guardian, child, spouse, or sibling of the
40 controlled dangerous substance user.

41 (2) An individual who was exposed to a controlled dangerous
42 substance in utero.

43 (3) An employer of the controlled dangerous substance user.

44 (4) A medical facility, insurer, employer, or other nongovernmental
45 entity that funded a drug treatment program or employee assistance
46 program for the controlled dangerous substance user or that otherwise

1 expended money on behalf of the controlled dangerous substance user.

2 (5) A person injured as a result of the reckless or negligent actions
3 of an individual user of a controlled dangerous substance.

4 No public entity, and no public agency other than a public hospital,
5 shall have a cause of action under this act.

6 b. A person entitled to bring an action under this act may seek
7 damages against:

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9 substance to the individual user of the controlled dangerous substance;

10 or

11 (2) A person who knowingly participated in the marketing of
12 controlled dangerous substances, if all of the following apply:

13 (a) The defendant's place of participation is situated in the same
14 county as the individual user's place of illegal activity;

15 (b) The defendant participated in the marketing of the same type
16 of controlled dangerous substances as those used by the individual
17 user;

18 (c) The defendant was previously convicted of an offense in the
19 State of New Jersey for that type of controlled dangerous substance;

20 and

21 (d) The defendant participated in the marketing of controlled
22 dangerous substances at any time during the period the individual user
23 unlawfully used the controlled dangerous substance.

24 c. A person entitled to bring an action under this section may
25 recover all of the following damages:

26 (1) Economic damages, including, but not limited to, the cost of
27 treatment and rehabilitation, medical expenses, loss of economic or
28 educational potential, loss of productivity, absenteeism, support
29 expenses, accidents or injury, and any other pecuniary loss proximately
30 caused by the use of a controlled dangerous substance.

31 (2) Noneconomic damages, including but not limited to physical
32 and emotional pain, suffering, physical impairment, physical
33 impairment, emotional distress, disfigurement, loss of enjoyment, loss
34 of companionship, services and consortium, and other nonpecuniary
35 losses proximately caused by an individual's use of a controlled
36 dangerous substance.

37 (3) Punitive damages.

38 (4) Reasonable attorney fees.

39 (5) Costs of suit, including, but not limited to, reasonable expenses
40 for expert testimony.

41

42 6. a. An individual user of a controlled dangerous substance may
43 bring an action for damages caused by the use of a controlled
44 dangerous substance only if all of the following conditions are met:

45 (1) The individual personally discloses to narcotics enforcement
46 authorities all of the information known to the individual regarding all

1 that individual's sources of controlled dangerous substances.

2 (2) The individual has not used a controlled dangerous substance
3 within the 30 days before filing the action.

4 (3) The individual continues to remain free of the use of an illegal
5 controlled substance throughout the pendency of the action.

6 b. An individual user entitled to bring an action under this section
7 may seek damages only from a person who transported, imported into
8 this State, distributed, dispensed, sold, possessed with intent to
9 distribute, or offered to distribute, in violation of any of the provisions
10 of chapter 35 of Title 2C of the New Jersey Statutes, the controlled
11 dangerous substance actually used by the individual user of a
12 controlled dangerous substance.

13 c. An individual user entitled to bring an action under this section
14 may recover only the following damages:

15 (1) Economic damages, including, but not limited to, the cost of
16 treatment, rehabilitation and medical expenses, loss of economic or
17 educational potential, loss of productivity, absenteeism, accidents or
18 injury, and any other pecuniary loss proximately caused by the person's
19 use of a controlled dangerous substance.

20 (2) Reasonable attorney fees.

21 (3) Costs of suit, including, but not limited to, reasonable expenses
22 for expert testimony.

23

24 7. a. A third party shall not pay damages awarded under this act,
25 or provide a defense or money for a defense, on behalf of an insured
26 under a contract of insurance or indemnification.

27 b. A cause of action authorized pursuant to this act may not be
28 assigned, either expressly, by subrogation, or by any other means,
29 directly or indirectly, to any public or publicly funded agency or
30 institution.

31

32 8. A person whose participation in the marketing of controlled
33 dangerous substances is grounds for liability pursuant to this act shall
34 be rebuttably presumed to be liable for damages incurred by the
35 plaintiff in the following percentages:

36 a. For a level 1 offense, 25 percent of the damages;

37 b. For a level 2 offense, 50 percent of the damages;

38 c. For a level 3 offense, 75 percent of the damages; and

39 d. For a level 4 offense, 100 percent of the damages.

40

41 9. a. Two or more persons may join in one action under this act as
42 plaintiffs if their respective actions have at least one market for
43 controlled dangerous substances in common and if any portion of the
44 period of use of a controlled dangerous substance overlaps with the
45 period of use of a controlled dangerous substance for every other
46 plaintiff.

1 b. Two or more persons may be joined in one action under this act
2 as defendants if those persons are liable to at least one plaintiff.

3
4 10. a. An action by an individual user of a controlled dangerous
5 substance is governed by the principles of comparative responsibility.
6 Comparative responsibility attributed to an individual user does not
7 bar the user's recovery but diminishes the award of damages
8 proportionately, according to the measure of responsibility attributed
9 to the user. The burden of proving comparative responsibility is on
10 the defendant, who shall prove comparative responsibility by clear and
11 convincing evidence.

12 b. Comparative responsibility shall not be attributed to a plaintiff
13 who is not an individual user of a controlled substance, unless that
14 plaintiff knowingly gave the individual user money for the purchase
15 of the controlled dangerous substance.

16
17 11. A person subject to liability under this act has a right of action
18 for contribution against another person subject to liability under this
19 act. Contribution may be enforced either in the original action or by
20 a separate action brought for that purpose. A plaintiff may seek
21 recovery in accordance with this act and other laws against a person
22 whom a defendant has asserted a right of contribution.

23
24 12. a. Proof of liability in an action brought under this act shall be
25 shown by clear and convincing evidence.

26 b. A person against whom recovery is sought who has been
27 convicted of a violation of N.J.S.2C:35-5, Manufacturing, Distributing
28 or Dispensing, or an equivalent offense under federal law or the law
29 of any other state, is estopped from denying illegal participation in the
30 market for controlled dangerous substances. If such conviction was
31 based upon the same type of controlled dangerous substance as that
32 used by the individual user, the conviction also constitutes prima facie
33 evidence of the person's participation in the marketing of controlled
34 dangerous substance user pursuant to this act.

35 c. The absence of a criminal conviction for a violation of
36 N.J.S.2C:35-5 or an equivalent offense under federal law or the law of
37 any other state does not bar recovery by a plaintiff bringing suit
38 pursuant to section 5 of this act.

39
40 13. A plaintiff under this act may request an ex parte prejudgment
41 attachment order from the court against all assets of a defendant
42 sufficient to satisfy a potential award.

43
44 14. a. A cause of action accrues under this act when a person has
45 reason to know of the harm from use of a controlled dangerous
46 substance that is the basis for the cause of action and has reason to

1 know that the use of a controlled dangerous substance is the cause of
2 the harm.

3 b. A claim under this act shall not be brought more than one year
4 after the defendant distributes, dispenses, or possesses with intent to
5 distribute, the controlled dangerous substance or more than one year
6 after the defendant is convicted of a crime involving controlled
7 dangerous substances, whichever is the later.

8

9 15. On motion by a governmental agency involved in an
10 investigation or prosecution involving a controlled dangerous
11 substance, an action brought under this act shall be stayed until the
12 completion of any underlying criminal investigation or prosecution.

13

14 16. No cause of action shall arise based on any act by a defendant
15 which occurred prior to the effective date of this act.

16

17 17. This act shall take effect immediately.

[First Reprint]

SENATE, No. 621

STATE OF NEW JERSEY
209th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2000 SESSION

Sponsored by:

Senator JOHN J. MATHEUSSEN

District 4 (Camden and Gloucester)

Senator NORMAN M. ROBERTSON

District 34 (Essex and Passaic)

Co-Sponsored by:

Senators Gormley, Bucco, Baer, Assemblyman Kelly, Assemblywoman

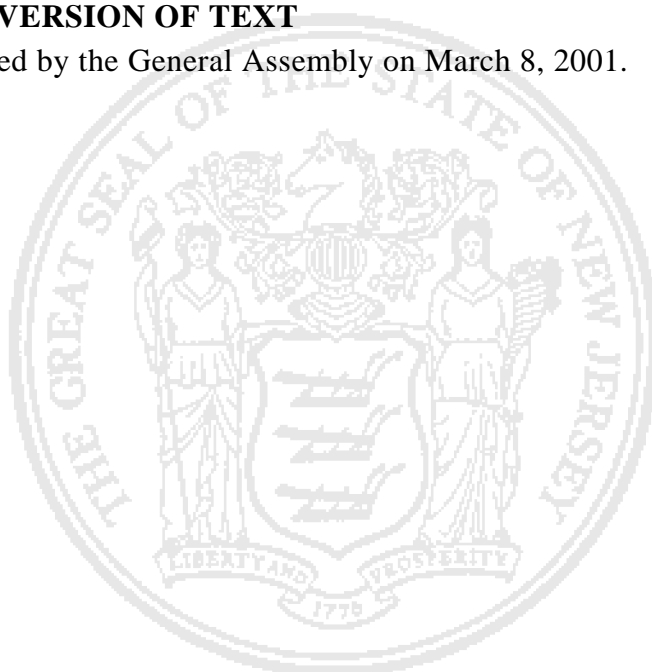
Frischia, Assemblymen Blee, LeFevre and DiGaetano

SYNOPSIS

Establishes civil action against drug dealers.

CURRENT VERSION OF TEXT

As amended by the General Assembly on March 8, 2001.



(Sponsorship Updated As Of: 3/9/2001)

1 AN ACT concerning civil actions against drug dealers and
2 supplementing Title 2C of the New Jersey Statutes.

3
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6
7 1. This act shall be known and may be cited as the "Drug Dealer
8 Liability Act."

9
10 2. The Legislature finds and declares:

11 a. Although the criminal justice system is an important weapon in
12 the battle against controlled dangerous substances, the civil justice
13 system can and must also be used. The civil justice system can provide
14 an avenue of compensation for those who have suffered harm as a
15 result of the marketing and distribution of controlled dangerous
16 substances. The persons who have joined the marketing of controlled
17 dangerous substances should bear the cost of the harm caused by that
18 market in the community.

19 b. The threat of liability under this act serves as an additional
20 deterrent to a recognizable segment of the network for marketing
21 controlled dangerous substances. Because of this threat, a person who
22 has assets unrelated to the sale of controlled dangerous substances,
23 who markets controlled dangerous substances at the workplace, who
24 encourages friends to become users, is likely to decide that the added
25 cost of entering the market is not worth the benefit. This is
26 particularly true for a first-time, casual dealer who has not yet made
27 substantial profits.

28 c. This act is intended to provide a mechanism whereby the costs
29 of the injuries caused by illegal drug use will be borne by those who
30 benefit from illegal drug dealing.

31 d. This act imposes liability against all participants in the marketing
32 of controlled dangerous substances, including small dealers,
33 particularly those in the workplace, who are not usually the focus of
34 criminal investigations. Small dealers increase the number of users and
35 ultimately are the people who become large dealers. It is these small
36 dealers who are most likely to be deterred by the threat of liability.

37
38 3. As used in this act:

39 a. "Marketing of controlled dangerous substances" means the illegal
40 distributing, dispensing, or possessing with intent to distribute, a
41 specified controlled dangerous substance.

42 b. "Individual user of controlled dangerous substance" means the

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly floor amendments adopted March 8, 2001.

1 individual whose illegal use of a specified controlled dangerous
2 substance is the basis of an action brought under this act.

3 c. "Level 1 offense" means:

4 (1) possessing with intent to distribute less than four ounces of a
5 specified controlled dangerous substance as defined in this section;

6 (2) distributing or dispensing less than one ounce of a specified
7 controlled dangerous substance as defined in this section;

8 (3) possessing with intent to distribute 25 or more but less than 50
9 marijuana plants;

10 (4) possessing with intent to distribute less than four pounds of
11 marijuana, or

12 (5) distributing or dispensing more than 28.5 grams of marijuana.

13 d. "Level 2 offense" means:

14 (1) possessing with intent to distribute four ounces or more but
15 less than eight ounces of a specified controlled dangerous substance
16 as defined in this section;

17 (2) distributing or dispensing one ounce or more but less than two
18 ounces of a specified controlled dangerous substance as defined in this
19 section;

20 (3) possessing with intent to distribute 50 or more but less than 75
21 marijuana plants;

22 (4) possessing with intent to distribute four pounds or more but
23 less than eight pounds of marijuana, or

24 (5) distributing or dispensing more than one pound but less than
25 five pounds of marijuana.

26 e. "Level 3 offense" means:

27 (1) possessing with intent to distribute eight ounces or more but
28 less than 16 ounces of a specified controlled dangerous substance as
29 defined in this section;

30 (2) distributing or dispensing two ounces or more but less than
31 four ounces of a specified controlled dangerous substance as defined
32 in this section;

33 (3) possessing with intent to distribute 75 or more but less than
34 100 marijuana plants;

35 (4) possessing with intent to distribute eight pounds or more but
36 less than 16 pounds of marijuana, or

37 (5) distributing or dispensing more than five pounds but less than
38 10 pounds of marijuana.

39 f. "Level 4 offense" means:

40 (1) possessing with intent to distribute 16 ounces or more of a
41 specified controlled dangerous substance as defined in this section;

42 (2) distributing or dispensing four ounces or more of a specified
43 controlled dangerous substance as defined in this section;

44 (3) possessing with intent to distribute 100 or more marijuana
45 plants;

46 (4) possessing with intent to distribute 16 pounds or more of

1 marijuana, or

2 (5) distributing or dispensing more than 10 pounds of marijuana.

3 g. "Participate in the illegal marketing of controlled dangerous
4 substances" means to transport, import into this State, distribute,
5 dispense, sell, possess with intent to distribute, or offer to distribute
6 a controlled dangerous substance, in violation of any of the provisions
7 of chapter 35 of Title 2C of the New Jersey Statutes. "Participate in
8 the marketing of controlled dangerous substances" does not include
9 the purchase or receipt of a controlled dangerous substance for
10 personal use only.

11 h. "Person" means any natural person, association, partnership,
12 corporation or other entity.

13 i. "Period of illegal use" means, in relation to the individual user of
14 a controlled dangerous substance, the time of the individual's first
15 illegal use of a controlled dangerous substance to the accrual of the
16 cause of action.

17 j. "Place of illegal activity" means, in relation to the individual user
18 of a specified controlled dangerous substance, each county in which
19 the individual illegally possess or uses a specified controlled dangerous
20 substance.

21 k. "Place of participation" means, in relation to a defendant in an
22 action brought under this act, each county in which the defendant
23 participates in the marketing of controlled dangerous substances.

24 l. "Specified controlled dangerous substance" means heroin,
25 cocaine, lysergic acid diethylamide, phencyclidine, methamphetamine,
26 phenyl-2-propanone (P2P) and any other controlled dangerous
27 substance specified under the provisions of N.J.S.2C:35-5 as being
28 unlawful to manufacture, distribute, or dispense, or to possess or have
29 under a person's control with intent to manufacture, distribute or
30 dispense.

31

32 4. A person who knowingly participates in the illegal marketing of
33 controlled dangerous substances within this State is liable for damages,
34 as provided in this act, for injury resulting from an individual's illegal
35 use of a controlled dangerous substance.

36

37 5. a. Any of the following persons may bring an action for
38 damages caused by an individual's illegal use of a controlled dangerous
39 substance:

40 (1) A parent, legal guardian, child, spouse, or sibling of the
41 controlled dangerous substance user.

42 (2) An individual who was exposed to a controlled dangerous
43 substance in utero.

44 (3) An employer of the controlled dangerous substance user.

1 (4) A medical facility, insurer, employer, or other nongovernmental
2 entity that funded a drug treatment program or employee assistance
3 program for the controlled dangerous substance user or that otherwise
4 expended money on behalf of the controlled dangerous substance user.

5 (5) A person injured as a result of the reckless or negligent actions
6 of an individual user of a controlled dangerous substance.

7 No public entity, and no public agency other than a public hospital,
8 shall have a cause of action under this act.

9 b. A person entitled to bring an action under this act may seek
10 damages against:

11 (1) A person who ¹illegally¹ distributed or dispensed a controlled
12 dangerous substance to the individual user of the controlled dangerous
13 substance; or

14 (2) A person who knowingly participated in the ¹illegal¹ marketing
15 of controlled dangerous substances, if all of the following apply:

16 (a) The defendant's place of participation is situated in the same
17 county as the individual user's place of illegal activity;

18 (b) The defendant participated in the marketing of the same type
19 of controlled dangerous substances as those used by the individual
20 user;

21 (c) The defendant was previously convicted of an offense in the
22 State of New Jersey for that type of controlled dangerous substance;
23 and

24 (d) The defendant participated in the marketing of controlled
25 dangerous substances at any time during the period the individual user
26 unlawfully used the controlled dangerous substance.

27 c. A person entitled to bring an action under this section may
28 recover all of the following damages:

29 (1) Economic damages, including, but not limited to, the cost of
30 treatment and rehabilitation, medical expenses, loss of economic or
31 educational potential, loss of productivity, absenteeism, support
32 expenses, accidents or injury, and any other pecuniary loss proximately
33 caused by the use of a controlled dangerous substance.

34 (2) Noneconomic damages, including but not limited to physical
35 and emotional pain, suffering, physical impairment, physical
36 impairment, emotional distress, disfigurement, loss of enjoyment, loss
37 of companionship, services and consortium, and other nonpecuniary
38 losses proximately caused by an individual's use of a controlled
39 dangerous substance.

40 (3) Punitive damages.

41 (4) Reasonable attorney fees.

42 (5) Costs of suit, including, but not limited to, reasonable expenses
43 for expert testimony.

1 6. a. An individual user of a controlled dangerous substance may
2 bring an action for damages caused by the use of a controlled
3 dangerous substance only if all of the following conditions are met:

4 (1) The individual personally discloses to narcotics enforcement
5 authorities all of the information known to the individual regarding all
6 that individual's sources of controlled dangerous substances.

7 (2) The individual has not used a controlled dangerous substance
8 within the 30 days before filing the action.

9 (3) The individual continues to remain free of the use of an illegal
10 controlled substance throughout the pendency of the action.

11 b. An individual user entitled to bring an action under this section
12 may seek damages only from a person who transported, imported into
13 this State, distributed, dispensed, sold, possessed with intent to
14 distribute, or offered to distribute, in violation of any of the provisions
15 of chapter 35 of Title 2C of the New Jersey Statutes, the controlled
16 dangerous substance actually used by the individual user of a
17 controlled dangerous substance.

18 c. An individual user entitled to bring an action under this section
19 may recover only the following damages:

20 (1) Economic damages, including, but not limited to, the cost of
21 treatment, rehabilitation and medical expenses, loss of economic or
22 educational potential, loss of productivity, absenteeism, accidents or
23 injury, and any other pecuniary loss proximately caused by the person's
24 use of a controlled dangerous substance.

25 (2) Reasonable attorney fees.

26 (3) Costs of suit, including, but not limited to, reasonable expenses
27 for expert testimony.

28

29 7. a. A third party shall not pay damages awarded under this act,
30 or provide a defense or money for a defense, on behalf of an insured
31 under a contract of insurance or indemnification.

32 b. A cause of action authorized pursuant to this act may not be
33 assigned, either expressly, by subrogation, or by any other means,
34 directly or indirectly, to any public or publicly funded agency or
35 institution.

36

37 8. A person whose participation in the marketing of controlled
38 dangerous substances is grounds for liability pursuant to this act shall
39 be rebuttably presumed to be liable for damages incurred by the
40 plaintiff in the following percentages:

41 a. For a level 1 offense, 25 percent of the damages;

42 b. For a level 2 offense, 50 percent of the damages;

43 c. For a level 3 offense, 75 percent of the damages; and

44 d. For a level 4 offense, 100 percent of the damages.

1 9. a. Two or more persons may join in one action under this act as
2 plaintiffs if their respective actions have at least one market for
3 controlled dangerous substances in common and if any portion of the
4 period of use of a controlled dangerous substance overlaps with the
5 period of use of a controlled dangerous substance for every other
6 plaintiff.

7 b. Two or more persons may be joined in one action under this act
8 as defendants if those persons are liable to at least one plaintiff.

9
10 10. a. An action by an individual user of a controlled dangerous
11 substance is governed by the principles of comparative responsibility.
12 Comparative responsibility attributed to an individual user does not
13 bar the user's recovery but diminishes the award of damages
14 proportionately, according to the measure of responsibility attributed
15 to the user. The burden of proving comparative responsibility is on
16 the defendant, who shall prove comparative responsibility by clear and
17 convincing evidence.

18 b. Comparative responsibility shall not be attributed to a plaintiff
19 who is not an individual user of a controlled substance, unless that
20 plaintiff knowingly gave the individual user money for the purchase
21 of the controlled dangerous substance.

22
23 11. A person subject to liability under this act has a right of action
24 for contribution against another person subject to liability under this
25 act. Contribution may be enforced either in the original action or by
26 a separate action brought for that purpose. A plaintiff may seek
27 recovery in accordance with this act and other laws against a person
28 whom a defendant has asserted a right of contribution.

29
30 12. a. Proof of liability in an action brought under this act shall be
31 shown by clear and convincing evidence.

32 b. A person against whom recovery is sought who has been
33 convicted of a violation of N.J.S.2C:35-5, Manufacturing, Distributing
34 or Dispensing, or an equivalent offense under federal law or the law
35 of any other state, is estopped from denying illegal participation in the
36 market for controlled dangerous substances. If such conviction was
37 based upon the same type of controlled dangerous substance as that
38 used by the individual user, the conviction also constitutes prima facie
39 evidence of the person's participation in the marketing of controlled
40 dangerous substance user pursuant to this act.

41 c. The absence of a criminal conviction for a violation of
42 N.J.S.2C:35-5 or an equivalent offense under federal law or the law of
43 any other state does not bar recovery by a plaintiff bringing suit
44 pursuant to ¹subsection b. of¹ section 5 of this act.

1 13. A plaintiff under this act may request an ex parte prejudgment
2 attachment order from the court against all assets of a defendant
3 sufficient to satisfy a potential award. ¹Any claim of the State
4 authorized pursuant to chapter 35A and 64 of Title 2C of the New
5 Jersey Statutes shall have priority over an order issued pursuant to this
6 section.¹

7
8 14. a. A cause of action accrues under this act when a person has
9 reason to know of the harm from use of a controlled dangerous
10 substance that is the basis for the cause of action and has reason to
11 know that the use of a controlled dangerous substance is the cause of
12 the harm.

13 b. ¹[A] Except as provided in subsection a. of this section, a¹
14 claim under this act shall not be brought more than one year after the
15 defendant distributes, dispenses, or possesses with intent to distribute,
16 the controlled dangerous substance or more than one year after the
17 defendant is convicted of a crime involving controlled dangerous
18 substances, whichever is the later.

19
20 15. On motion by a governmental agency involved in an
21 investigation or prosecution involving a controlled dangerous
22 substance, an action brought under this act shall be stayed until the
23 completion of any underlying criminal investigation or prosecution.

24
25 ¹16. Any judgment resulting from a cause of action brought
26 pursuant to this act shall be satisfied only after the satisfaction of any
27 assessment, fine, fee, penalty or restitution imposed by law and
28 enumerated in section 13 of P.L. 1991, c.329 (2C:46-4.1).¹

29
30 ¹[16.] 17.¹ No cause of action shall arise based on any act by a
31 defendant which occurred prior to the effective date of this act.

32
33 ¹[17.] 18.¹ This act shall take effect immediately.

STATEMENT TO
SENATE, No. 621

with Assembly Floor Amendments
(Proposed By Assemblyman KELLY)

ADOPTED: MARCH 8, 2001

These amendments would provide that any prejudgment attachment order or judgment resulting from a cause of action brought pursuant to the "Drug Dealer Liability Act," would be satisfied only after the satisfaction of claims by the State. Moreover, any private claim would be subordinate to those imposed pursuant to the criminal code.

In addition, the amendments to section 5 clarify that a person entitled to bring an action pursuant to the act may seek damages only against those who illegally distribute or dispense controlled dangerous substances. Further technical amendments to sections 12 and 14 add clarifying cross references.

ASSEMBLY, No. 918

STATE OF NEW JERSEY 209th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2000 SESSION

Sponsored by:

Assemblyman JOHN V. KELLY

District 36 (Bergen, Essex and Passaic)

Assemblywoman ARLINE M. FRISCIA

District 19 (Middlesex)

Co-Sponsored by:

Assemblymen Blee and LeFevre

SYNOPSIS

Establishes civil action against drug dealers.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



(Sponsorship Updated As Of: 9/26/2000)

1 AN ACT concerning civil actions against drug dealers and
2 supplementing Title 2C of the New Jersey Statutes.

3
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6
7 1. This act shall be known and may be cited as the "Drug Dealer
8 Liability Act."

9
10 2. The Legislature finds and declares:

11 a. Although the criminal justice system is an important weapon in
12 the battle against controlled dangerous substances, the civil justice
13 system can and must also be used. The civil justice system can provide
14 an avenue of compensation for those who have suffered harm as a
15 result of the marketing and distribution of controlled dangerous
16 substances. The persons who have joined the marketing of controlled
17 dangerous substances should bear the cost of the harm caused by that
18 market in the community.

19 b. The threat of liability under this act serves as an additional
20 deterrent to a recognizable segment of the network for marketing
21 controlled dangerous substances. Because of this threat, a person who
22 has assets unrelated to the sale of controlled dangerous substances,
23 who markets controlled dangerous substances at the workplace, who
24 encourages friends to become users, is likely to decide that the added
25 cost of entering the market is not worth the benefit. This is
26 particularly true for a first-time, casual dealer who has not yet made
27 substantial profits.

28 c. This act is intended to provide a mechanism whereby the costs
29 of the injuries caused by illegal drug use will be borne by those who
30 benefit from illegal drug dealing.

31 d. This act imposes liability against all participants in the marketing
32 of controlled dangerous substances, including small dealers,
33 particularly those in the workplace, who are not usually the focus of
34 criminal investigations. Small dealers increase the number of users and
35 ultimately are the people who become large dealers. It is these small
36 dealers who are most likely to be deterred by the threat of liability.

37
38 3. As used in this act:

39 a. "Marketing of controlled dangerous substances" means the
40 illegal distributing, dispensing, or possessing with intent to distribute,
41 a specified controlled dangerous substance.

42 b. "Individual user of controlled dangerous substance" means the
43 individual whose illegal use of a specified controlled dangerous
44 substance is the basis of an action brought under this act.

45 c. "Level 1 offense" means:

46 (1) possessing with intent to distribute less than four ounces of a

- 1 specified controlled dangerous substance as defined in this section;
- 2 (2) distributing or dispensing less than one ounce of a specified
- 3 controlled dangerous substance as defined in this section;
- 4 (3) possessing with intent to distribute 25 or more but less than 50
- 5 marijuana plants;
- 6 (4) possessing with intent to distribute less than four pounds of
- 7 marijuana, or
- 8 (5) distributing or dispensing more than 28.5 grams of marijuana.
- 9 d. "Level 2 offense" means:
- 10 (1) possessing with intent to distribute four ounces or more but
- 11 less than eight ounces of a specified controlled dangerous substance
- 12 as defined in this section;
- 13 (2) distributing or dispensing one ounce or more but less than two
- 14 ounces of a specified controlled dangerous substance as defined in this
- 15 section;
- 16 (3) possessing with intent to distribute 50 or more but less than 75
- 17 marijuana plants;
- 18 (4) possessing with intent to distribute four pounds or more but
- 19 less than eight pounds of marijuana, or
- 20 (5) distributing or dispensing more than one pound but less than
- 21 five pounds of marijuana.
- 22 e. "Level 3 offense" means:
- 23 (1) possessing with intent to distribute eight ounces or more but
- 24 less than 16 ounces of a specified controlled dangerous substance as
- 25 defined in this section;
- 26 (2) distributing or dispensing two ounces or more but less than
- 27 four ounces of a specified controlled dangerous substance as defined
- 28 in this section;
- 29 (3) possessing with intent to distribute 75 or more but less than
- 30 100 marijuana plants;
- 31 (4) possessing with intent to distribute eight pounds or more but
- 32 less than 16 pounds of marijuana, or
- 33 (5) distributing or dispensing more than five pounds but less than
- 34 10 pounds of marijuana.
- 35 f. "Level 4 offense" means:
- 36 (1) possessing with intent to distribute 16 ounces or more of a
- 37 specified controlled dangerous substance as defined in this section;
- 38 (2) distributing or dispensing four ounces or more of a specified
- 39 controlled dangerous substance as defined in this section;
- 40 (3) possessing with intent to distribute 100 or more marijuana
- 41 plants;
- 42 (4) possessing with intent to distribute 16 pounds or more of
- 43 marijuana, or
- 44 (5) distributing or dispensing more than 10 pounds of marijuana.
- 45 g. "Participate in the illegal marketing of controlled dangerous
- 46 substances" means to transport, import into this State, distribute,

1 dispense, sell, possess with intent to distribute, or offer to distribute
2 a controlled dangerous substance, in violation of any of the provisions
3 of chapter 35 of Title 2C of the New Jersey Statutes. "Participate in
4 the marketing of controlled dangerous substances" does not include
5 the purchase or receipt of a controlled dangerous substance for
6 personal use only.

7 h. "Person" means any natural person, association, partnership,
8 corporation or other entity.

9 i. "Period of illegal use" means, in relation to the individual user of
10 a controlled dangerous substance, the time of the individual's first
11 illegal use of a controlled dangerous substance to the accrual of the
12 cause of action.

13 j. "Place of illegal activity" means, in relation to the individual user
14 of a specified controlled dangerous substance, each county in which
15 the individual illegally possess or uses a specified controlled dangerous
16 substance.

17 k. "Place of participation" means, in relation to a defendant in an
18 action brought under this act, each county in which the defendant
19 participates in the marketing of controlled dangerous substances.

20 l. "Specified controlled dangerous substance" means heroin,
21 cocaine, lysergic acid diethylamide, phencyclidine, methamphetamine,
22 phenyl-2-propanone (P2P) and any other controlled dangerous
23 substance specified under the provisions of N.J.S.2C:35-5 as being
24 unlawful to manufacture, distribute, or dispense, or to possess or have
25 under a person's control with intent to manufacture, distribute or
26 dispense.

27
28 4. A person who knowingly participates in the illegal marketing of
29 controlled dangerous substances within this State is liable for damages,
30 as provided in this act, for injury resulting from an individual's illegal
31 use of a controlled dangerous substance.

32
33 5. a. Any of the following persons may bring an action for
34 damages caused by an individual's illegal use of a controlled dangerous
35 substance:

36 (1) A parent, legal guardian, child, spouse, or sibling of the
37 controlled dangerous substance user.

38 (2) An individual who was exposed to a controlled dangerous
39 substance in utero.

40 (3) An employer of the controlled dangerous substance user.

41 (4) A medical facility, insurer, employer, or other nongovernmental
42 entity that funded a drug treatment program or employee assistance
43 program for the controlled dangerous substance user or that otherwise
44 expended money on behalf of the controlled dangerous substance user.

45 (5) A person injured as a result of the reckless or negligent actions
46 of an individual user of a controlled dangerous substance.

1 No public entity, and no public agency other than a public hospital,
2 shall have a cause of action under this act.

3 b. A person entitled to bring an action under this act may seek
4 damages against:

5 (1) A person who distributed or dispensed a controlled dangerous
6 substance to the individual user of the controlled dangerous substance;
7 or

8 (2) A person who knowingly participated in the marketing of
9 controlled dangerous substances, if all of the following apply:

10 (a) The defendant's place of participation is situated in the same
11 county as the individual user's place of illegal activity;

12 (b) The defendant participated in the marketing of the same type
13 of controlled dangerous substances as those used by the individual
14 user;

15 (c) The defendant was previously convicted of an offense in the
16 State of New Jersey for that type of controlled dangerous substance;
17 and

18 (d) The defendant participated in the marketing of controlled
19 dangerous substances at any time during the period the individual user
20 unlawfully used the controlled dangerous substance.

21 c. A person entitled to bring an action under this section may
22 recover all of the following damages:

23 (1) Economic damages, including, but not limited to, the cost of
24 treatment and rehabilitation, medical expenses, loss of economic or
25 educational potential, loss of productivity, absenteeism, support
26 expenses, accidents or injury, and any other pecuniary loss proximately
27 caused by the use of a controlled dangerous substance.

28 (2) Noneconomic damages, including but not limited to physical
29 and emotional pain, suffering, physical impairment, physical
30 impairment, emotional distress, disfigurement, loss of enjoyment, loss
31 of companionship, services and consortium, and other nonpecuniary
32 losses proximately caused by an individual's use of a controlled
33 dangerous substance.

34 (3) Punitive damages.

35 (4) Reasonable attorney fees.

36 (5) Costs of suit, including, but not limited to, reasonable expenses
37 for expert testimony.

38

39 6. a. An individual user of a controlled dangerous substance may
40 bring an action for damages caused by the use of a controlled
41 dangerous substance only if all of the following conditions are met:

42 (1) The individual personally discloses to narcotics enforcement
43 authorities all of the information known to the individual regarding all
44 that individual's sources of controlled dangerous substances.

45 (2) The individual has not used a controlled dangerous substance
46 within the 30 days before filing the action.

1 (3) The individual continues to remain free of the use of an illegal
2 controlled substance throughout the pendency of the action.

3 b. An individual user entitled to bring an action under this section
4 may seek damages only from a person who transported, imported into
5 this State, distributed, dispensed, sold, possessed with intent to
6 distribute, or offered to distribute, in violation of any of the provisions
7 of chapter 35 of Title 2C of the New Jersey Statutes, the controlled
8 dangerous substance actually used by the individual user of a
9 controlled dangerous substance.

10 c. An individual user entitled to bring an action under this section
11 may recover only the following damages:

12 (1) Economic damages, including, but not limited to, the cost of
13 treatment, rehabilitation and medical expenses, loss of economic or
14 educational potential, loss of productivity, absenteeism, accidents or
15 injury, and any other pecuniary loss proximately caused by the person's
16 use of a controlled dangerous substance.

17 (2) Reasonable attorney fees.

18 (3) Costs of suit, including, but not limited to, reasonable expenses
19 for expert testimony.

20

21 7. a. A third party shall not pay damages awarded under this act,
22 or provide a defense or money for a defense, on behalf of an insured
23 under a contract of insurance or indemnification.

24 b. A cause of action authorized pursuant to this act may not be
25 assigned, either expressly, by subrogation, or by any other means,
26 directly or indirectly, to any public or publicly funded agency or
27 institution.

28

29 8. A person whose participation in the marketing of controlled
30 dangerous substances is grounds for liability pursuant to this act shall
31 be rebuttably presumed to be liable for damages incurred by the
32 plaintiff in the following percentages:

33 a. For a level 1 offense, 25 percent of the damages;

34 b. For a level 2 offense, 50 percent of the damages;

35 c. For a level 3 offense, 75 percent of the damages; and

36 d. For a level 4 offense, 100 percent of the damages.

37

38 9. a. Two or more persons may join in one action under this act as
39 plaintiffs if their respective actions have at least one market for
40 controlled dangerous substances in common and if any portion of the
41 period of use of a controlled dangerous substance overlaps with the
42 period of use of a controlled dangerous substance for every other
43 plaintiff.

44 b. Two or more persons may be joined in one action under this act
45 as defendants if those persons are liable to at least one plaintiff.

1 10. a. An action by an individual user of a controlled dangerous
2 substance is governed by the principles of comparative responsibility.
3 Comparative responsibility attributed to an individual user does not
4 bar the user's recovery but diminishes the award of damages
5 proportionately, according to the measure of responsibility attributed
6 to the user. The burden of proving comparative responsibility is on
7 the defendant, who shall prove comparative responsibility by clear and
8 convincing evidence.

9 b. Comparative responsibility shall not be attributed to a plaintiff
10 who is not an individual user of a controlled substance, unless that
11 plaintiff knowingly gave the individual user money for the purchase
12 of the controlled dangerous substance.

13
14 11. A person subject to liability under this act has a right of action
15 for contribution against another person subject to liability under this
16 act. Contribution may be enforced either in the original action or by
17 a separate action brought for that purpose. A plaintiff may seek
18 recovery in accordance with this act and other laws against a person
19 whom a defendant has asserted a right of contribution.

20
21 12. a. Proof of liability in an action brought under this act shall be
22 shown by clear and convincing evidence.

23 b. A person against whom recovery is sought who has been
24 convicted of a violation of N.J.S.2C:35-5, Manufacturing, Distributing
25 or Dispensing, or an equivalent offense under federal law or the law
26 of any other state, is estopped from denying illegal participation in the
27 market for controlled dangerous substances. If such conviction was
28 based upon the same type of controlled dangerous substance as that
29 used by the individual user, the conviction also constitutes prima facie
30 evidence of the person's participation in the marketing of controlled
31 dangerous substance user pursuant to this act.

32 c. The absence of a criminal conviction for a violation of
33 N.J.S.2C:35-5 or an equivalent offense under federal law or the law of
34 any other state does not bar recovery by a plaintiff bringing suit
35 pursuant to section 5 of this act.

36
37 13. A plaintiff under this act may request an ex parte prejudgment
38 attachment order from the court against all assets of a defendant
39 sufficient to satisfy a potential award.

40
41 14. a. A cause of action accrues under this act when a person has
42 reason to know of the harm from use of a controlled dangerous
43 substance that is the basis for the cause of action and has reason to
44 know that the use of a controlled dangerous substance is the cause of
45 the harm.

46 b. A claim under this act shall not be brought more than one year

1 after the defendant distributes, dispenses, or possesses with intent to
2 distribute, the controlled dangerous substance or more than one year
3 after the defendant is convicted of a crime involving controlled
4 dangerous substances, whichever is the later.

5
6 15. On motion by a governmental agency involved in an
7 investigation or prosecution involving a controlled dangerous
8 substance, an action brought under this act shall be stayed until the
9 completion of any underlying criminal investigation or prosecution.

10
11 16. No cause of action shall arise based on any act by a defendant
12 which occurred prior to the effective date of this act.

13
14 17. This act shall take effect immediately.

15
16
17 STATEMENT

18
19 This bill provides a civil remedy for damages to persons injured as
20 a result of the illegal use of controlled dangerous substances. These
21 persons include parents, employers, insurers, government entities, and
22 others who pay for drug treatment or employee assistance programs,
23 as well as infants injured as a result of exposure to illegal drugs in
24 utero. The bill is intended to shift, to the extent possible, the cost of
25 the damage caused by the illegal market for controlled dangerous
26 substances to those persons who profit from that market.

27 The bill provides that parents, children, spouses and siblings of drug
28 users, as well as employers of drug users, medical facilities which treat
29 the drug users, and persons injured by the drug users' actions, would
30 be entitled to sue drug dealers for civil damages.

31 Drug dealers would be liable for such damages in proportion to the
32 scale of their drug dealing, large-scale drug dealers being liable for all
33 damages and smaller-scale dealers being liable for a smaller percentage
34 of damages.

35 A drug seller would be liable even if he did not actually sell the
36 drugs to the particular user, as long as he sells the same type of drug
37 within the same county and has a past criminal conviction for a drug-
38 related offense.

39 However, a drug seller without any past criminal convictions for
40 drug-related offenses would still be liable for damages in those cases
41 where he is identified as having sold drugs to the particular user whose
42 drug use is the basis for the suit.

43 The person suing would be entitled to recover economic damages
44 and noneconomic damages, such as pain, suffering, and emotional
45 distress, as well as punitive damages and attorney fees.

46 In addition, the bill provides that under certain limited

1 circumstances the drug users themselves could sue their own dealers.
2 Users would be eligible to bring suit if they first disclose to law
3 enforcement authorities all of the information they know concerning
4 their sources, if they have not used a controlled dangerous substance
5 within the 30 days before filing the action, and if they continue to
6 remain free of CDS use during the pendency of the action. Drug users
7 would only be allowed to bring suit against the actual dealer who sold
8 them the drug. Users would be entitled to receive economic
9 (compensatory) damages and attorney fees, but could not receive
10 noneconomic damages (such as damages for pain and suffering).

11 The bill bars all government entities from suit, in order to avoid
12 possible constitutional issues of double jeopardy.

13 The bill is modeled on a statute enacted in the state of California in
14 September, 1996.

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 918

STATE OF NEW JERSEY

DATED: OCTOBER 16, 2000

The Assembly Judiciary Committee reports favorably Assembly Bill No. 918.

This bill provides a civil remedy for damages to persons injured as a result of the illegal use of controlled dangerous substances. The bill provides that parents, children, spouses and siblings of drug users, as well as employers of drug users, medical facilities which treat the drug users, and persons injured by the drug users' actions, would be entitled to sue drug dealers for civil damages.

Under the provisions of the bill, drug dealers would be liable for such damages in proportion to the scale of their drug dealing, large-scale drug dealers being liable for all damages and smaller-scale dealers being liable for a smaller percentage of damages.

A drug seller would be liable even if he did not actually sell the drugs to the particular user, as long as he sells the same type of drug within the same county and has a past criminal conviction for a drug-related offense. A drug seller without any past criminal convictions for drug-related offenses would still be liable for damages in those cases where he is identified as having sold drugs to the particular user whose drug use is the basis for the suit. Under the bill, the person suing would be entitled to recover economic damages and damages for pain and suffering and emotional distress, as well as punitive damages and attorney fees.

In addition, the bill provides that under certain limited circumstances the drug users themselves could sue their own dealers. Users would be eligible to bring suit if they first disclose to law enforcement authorities all of the information they know concerning their sources, if they have not used a controlled dangerous substance within the 30 days before filing the action, and if they continue to remain free of CDS use during the pendency of the action. Drug users would only be allowed to bring suit against the actual dealer who sold them the drug. Users would be entitled to receive economic damages and attorney fees, but could not receive noneconomic damages such as damages for pain and suffering.

In order to avoid possible constitutional issues of double jeopardy, the bill bars all government entities from suit.

This bill was prefiled for introduction in the 2000 session pending

technical review. As reported, the bill includes the changes required by technical review which has been performed.

This bill is identical to Senate Bill No. 621.

ASSEMBLY, No. 918

STATE OF NEW JERSEY 209th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2000 SESSION

Sponsored by:

Assemblyman JOHN V. KELLY

District 36 (Bergen, Essex and Passaic)

Assemblywoman ARLINE M. FRISCIA

District 19 (Middlesex)

Co-Sponsored by:

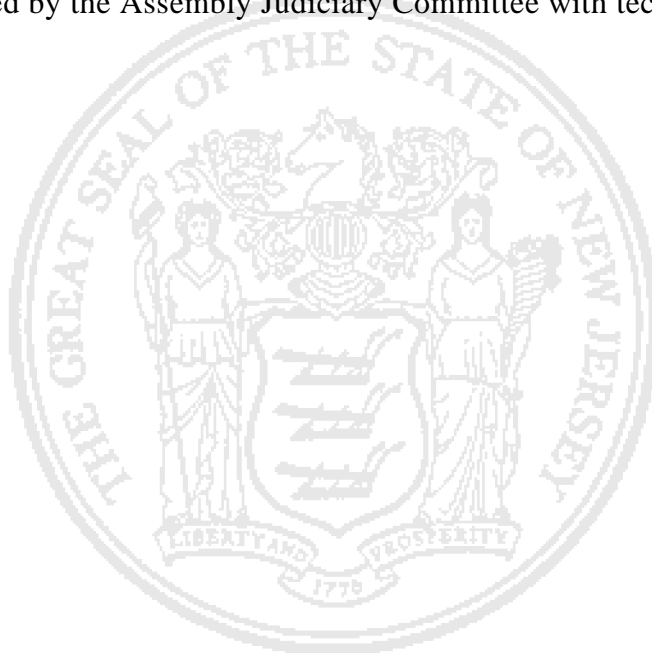
Assemblymen Blee, LeFevre and DiGaetano

SYNOPSIS

Establishes civil action against drug dealers.

CURRENT VERSION OF TEXT

As reported by the Assembly Judiciary Committee with technical review.



(Sponsorship Updated As Of: 10/31/2000)

1 AN ACT concerning civil actions against drug dealers and
2 supplementing Title 2C of the New Jersey Statutes.

3
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6
7 1. This act shall be known and may be cited as the "Drug Dealer
8 Liability Act."

9
10 2. The Legislature finds and declares:

11 a. Although the criminal justice system is an important weapon in
12 the battle against controlled dangerous substances, the civil justice
13 system can and must also be used. The civil justice system can provide
14 an avenue of compensation for those who have suffered harm as a
15 result of the marketing and distribution of controlled dangerous
16 substances. The persons who have joined the marketing of controlled
17 dangerous substances should bear the cost of the harm caused by that
18 market in the community.

19 b. The threat of liability under this act serves as an additional
20 deterrent to a recognizable segment of the network for marketing
21 controlled dangerous substances. Because of this threat, a person who
22 has assets unrelated to the sale of controlled dangerous substances,
23 who markets controlled dangerous substances at the workplace, who
24 encourages friends to become users, is likely to decide that the added
25 cost of entering the market is not worth the benefit. This is
26 particularly true for a first-time, casual dealer who has not yet made
27 substantial profits.

28 c. This act is intended to provide a mechanism whereby the costs
29 of the injuries caused by illegal drug use will be borne by those who
30 benefit from illegal drug dealing.

31 d. This act imposes liability against all participants in the marketing
32 of controlled dangerous substances, including small dealers,
33 particularly those in the workplace, who are not usually the focus of
34 criminal investigations. Small dealers increase the number of users and
35 ultimately are the people who become large dealers. It is these small
36 dealers who are most likely to be deterred by the threat of liability.

37
38 3. As used in this act:

39 a. "Marketing of controlled dangerous substances" means the
40 illegal distributing, dispensing, or possessing with intent to distribute,
41 a specified controlled dangerous substance.

42 b. "Individual user of controlled dangerous substance" means the
43 individual whose illegal use of a specified controlled dangerous
44 substance is the basis of an action brought under this act.

45 c. "Level 1 offense" means:

46 (1) possessing with intent to distribute less than four ounces of a

- 1 specified controlled dangerous substance as defined in this section;
- 2 (2) distributing or dispensing less than one ounce of a specified
- 3 controlled dangerous substance as defined in this section;
- 4 (3) possessing with intent to distribute 25 or more but less than
- 5 50 marijuana plants;
- 6 (4) possessing with intent to distribute less than four pounds of
- 7 marijuana, or
- 8 (5) distributing or dispensing more than 28.5 grams of marijuana.
- 9 d. "Level 2 offense" means:
- 10 (1) possessing with intent to distribute four ounces or more but
- 11 less than eight ounces of a specified controlled dangerous substance
- 12 as defined in this section;
- 13 (2) distributing or dispensing one ounce or more but less than two
- 14 ounces of a specified controlled dangerous substance as defined in this
- 15 section;
- 16 (3) possessing with intent to distribute 50 or more but less than 75
- 17 marijuana plants;
- 18 (4) possessing with intent to distribute four pounds or more but
- 19 less than eight pounds of marijuana, or
- 20 (5) distributing or dispensing more than one pound but less than
- 21 five pounds of marijuana.
- 22 e. "Level 3 offense" means:
- 23 (1) possessing with intent to distribute eight ounces or more but
- 24 less than 16 ounces of a specified controlled dangerous substance as
- 25 defined in this section;
- 26 (2) distributing or dispensing two ounces or more but less than
- 27 four ounces of a specified controlled dangerous substance as defined
- 28 in this section;
- 29 (3) possessing with intent to distribute 75 or more but less than
- 30 100 marijuana plants;
- 31 (4) possessing with intent to distribute eight pounds or more but
- 32 less than 16 pounds of marijuana, or
- 33 (5) distributing or dispensing more than five pounds but less than
- 34 10 pounds of marijuana.
- 35 f. "Level 4 offense" means:
- 36 (1) possessing with intent to distribute 16 ounces or more of a
- 37 specified controlled dangerous substance as defined in this section;
- 38 (2) distributing or dispensing four ounces or more of a specified
- 39 controlled dangerous substance as defined in this section;
- 40 (3) possessing with intent to distribute 100 or more marijuana
- 41 plants;
- 42 (4) possessing with intent to distribute 16 pounds or more of
- 43 marijuana, or
- 44 (5) distributing or dispensing more than 10 pounds of marijuana.
- 45 g. "Participate in the illegal marketing of controlled dangerous
- 46 substances" means to transport, import into this State, distribute,

1 dispense, sell, possess with intent to distribute, or offer to distribute
2 a controlled dangerous substance, in violation of any of the provisions
3 of chapter 35 of Title 2C of the New Jersey Statutes. "Participate in
4 the marketing of controlled dangerous substances" does not include
5 the purchase or receipt of a controlled dangerous substance for
6 personal use only.

7 h. "Person" means any natural person, association, partnership,
8 corporation or other entity.

9 i. "Period of illegal use" means, in relation to the individual user of
10 a controlled dangerous substance, the time of the individual's first
11 illegal use of a controlled dangerous substance to the accrual of the
12 cause of action.

13 j. "Place of illegal activity" means, in relation to the individual user
14 of a specified controlled dangerous substance, each county in which
15 the individual illegally possess or uses a specified controlled dangerous
16 substance.

17 k. "Place of participation" means, in relation to a defendant in an
18 action brought under this act, each county in which the defendant
19 participates in the marketing of controlled dangerous substances.

20 l. "Specified controlled dangerous substance" means heroin,
21 cocaine, lysergic acid diethylamide, phencyclidine, methamphetamine,
22 phenyl-2-propanone (P2P) and any other controlled dangerous
23 substance specified under the provisions of N.J.S.2C:35-5 as being
24 unlawful to manufacture, distribute, or dispense, or to possess or have
25 under a person's control with intent to manufacture, distribute or
26 dispense.

27
28 4. A person who knowingly participates in the illegal marketing of
29 controlled dangerous substances within this State is liable for damages,
30 as provided in this act, for injury resulting from an individual's illegal
31 use of a controlled dangerous substance.

32
33 5. a. Any of the following persons may bring an action for
34 damages caused by an individual's illegal use of a controlled dangerous
35 substance:

36 (1) A parent, legal guardian, child, spouse, or sibling of the
37 controlled dangerous substance user.

38 (2) An individual who was exposed to a controlled dangerous
39 substance in utero.

40 (3) An employer of the controlled dangerous substance user.

41 (4) A medical facility, insurer, employer, or other nongovernmental
42 entity that funded a drug treatment program or employee assistance
43 program for the controlled dangerous substance user or that otherwise
44 expended money on behalf of the controlled dangerous substance user.

45 (5) A person injured as a result of the reckless or negligent actions
46 of an individual user of a controlled dangerous substance.

1 No public entity, and no public agency other than a public hospital,
2 shall have a cause of action under this act.

3 b. A person entitled to bring an action under this act may seek
4 damages against:

5 (1) A person who distributed or dispensed a controlled dangerous
6 substance to the individual user of the controlled dangerous substance;
7 or

8 (2) A person who knowingly participated in the marketing of
9 controlled dangerous substances, if all of the following apply:

10 (a) The defendant's place of participation is situated in the same
11 county as the individual user's place of illegal activity;

12 (b) The defendant participated in the marketing of the same type
13 of controlled dangerous substances as those used by the individual
14 user;

15 (c) The defendant was previously convicted of an offense in the
16 State of New Jersey for that type of controlled dangerous substance;
17 and

18 (d) The defendant participated in the marketing of controlled
19 dangerous substances at any time during the period the individual user
20 unlawfully used the controlled dangerous substance.

21 c. A person entitled to bring an action under this section may
22 recover all of the following damages:

23 (1) Economic damages, including, but not limited to, the cost of
24 treatment and rehabilitation, medical expenses, loss of economic or
25 educational potential, loss of productivity, absenteeism, support
26 expenses, accidents or injury, and any other pecuniary loss proximately
27 caused by the use of a controlled dangerous substance.

28 (2) Noneconomic damages, including but not limited to physical
29 and emotional pain, suffering, physical impairment, physical
30 impairment, emotional distress, disfigurement, loss of enjoyment, loss
31 of companionship, services and consortium, and other nonpecuniary
32 losses proximately caused by an individual's use of a controlled
33 dangerous substance.

34 (3) Punitive damages.

35 (4) Reasonable attorney fees.

36 (5) Costs of suit, including, but not limited to, reasonable expenses
37 for expert testimony.

38

39 6. a. An individual user of a controlled dangerous substance may
40 bring an action for damages caused by the use of a controlled
41 dangerous substance only if all of the following conditions are met:

42 (1) The individual personally discloses to narcotics enforcement
43 authorities all of the information known to the individual regarding all
44 that individual's sources of controlled dangerous substances.

45 (2) The individual has not used a controlled dangerous substance
46 within the 30 days before filing the action.

1 (3) The individual continues to remain free of the use of an illegal
2 controlled substance throughout the pendency of the action.

3 b. An individual user entitled to bring an action under this section
4 may seek damages only from a person who transported, imported into
5 this State, distributed, dispensed, sold, possessed with intent to
6 distribute, or offered to distribute, in violation of any of the provisions
7 of chapter 35 of Title 2C of the New Jersey Statutes, the controlled
8 dangerous substance actually used by the individual user of a
9 controlled dangerous substance.

10 c. An individual user entitled to bring an action under this section
11 may recover only the following damages:

12 (1) Economic damages, including, but not limited to, the cost of
13 treatment, rehabilitation and medical expenses, loss of economic or
14 educational potential, loss of productivity, absenteeism, accidents or
15 injury, and any other pecuniary loss proximately caused by the person's
16 use of a controlled dangerous substance.

17 (2) Reasonable attorney fees.

18 (3) Costs of suit, including, but not limited to, reasonable expenses
19 for expert testimony.

20

21 7. a. A third party shall not pay damages awarded under this act,
22 or provide a defense or money for a defense, on behalf of an insured
23 under a contract of insurance or indemnification.

24 b. A cause of action authorized pursuant to this act may not be
25 assigned, either expressly, by subrogation, or by any other means,
26 directly or indirectly, to any public or publicly funded agency or
27 institution.

28

29 8. A person whose participation in the marketing of controlled
30 dangerous substances is grounds for liability pursuant to this act shall
31 be rebuttably presumed to be liable for damages incurred by the
32 plaintiff in the following percentages:

33 a. For a level 1 offense, 25 percent of the damages;

34 b. For a level 2 offense, 50 percent of the damages;

35 c. For a level 3 offense, 75 percent of the damages; and

36 d. For a level 4 offense, 100 percent of the damages.

37

38 9. a. Two or more persons may join in one action under this act as
39 plaintiffs if their respective actions have at least one market for
40 controlled dangerous substances in common and if any portion of the
41 period of use of a controlled dangerous substance overlaps with the
42 period of use of a controlled dangerous substance for every other
43 plaintiff.

44 b. Two or more persons may be joined in one action under this act
45 as defendants if those persons are liable to at least one plaintiff.

1 10. a. An action by an individual user of a controlled dangerous
2 substance is governed by the principles of comparative responsibility.
3 Comparative responsibility attributed to an individual user does not
4 bar the user's recovery but diminishes the award of damages
5 proportionately, according to the measure of responsibility attributed
6 to the user. The burden of proving comparative responsibility is on
7 the defendant, who shall prove comparative responsibility by clear and
8 convincing evidence.

9 b. Comparative responsibility shall not be attributed to a plaintiff
10 who is not an individual user of a controlled substance, unless that
11 plaintiff knowingly gave the individual user money for the purchase
12 of the controlled dangerous substance.

13
14 11. A person subject to liability under this act has a right of action
15 for contribution against another person subject to liability under this
16 act. Contribution may be enforced either in the original action or by
17 a separate action brought for that purpose. A plaintiff may seek
18 recovery in accordance with this act and other laws against a person
19 whom a defendant has asserted a right of contribution.

20
21 12. a. Proof of liability in an action brought under this act shall be
22 shown by clear and convincing evidence.

23 b. A person against whom recovery is sought who has been
24 convicted of a violation of N.J.S.2C:35-5, Manufacturing, Distributing
25 or Dispensing, or an equivalent offense under federal law or the law
26 of any other state, is estopped from denying illegal participation in the
27 market for controlled dangerous substances. If such conviction was
28 based upon the same type of controlled dangerous substance as that
29 used by the individual user, the conviction also constitutes prima facie
30 evidence of the person's participation in the marketing of controlled
31 dangerous substance user pursuant to this act.

32 c. The absence of a criminal conviction for a violation of
33 N.J.S.2C:35-5 or an equivalent offense under federal law or the law of
34 any other state does not bar recovery by a plaintiff bringing suit
35 pursuant to section 5 of this act.

36
37 13. A plaintiff under this act may request an ex parte prejudgment
38 attachment order from the court against all assets of a defendant
39 sufficient to satisfy a potential award.

40
41 14. a. A cause of action accrues under this act when a person has
42 reason to know of the harm from use of a controlled dangerous
43 substance that is the basis for the cause of action and has reason to
44 know that the use of a controlled dangerous substance is the cause of
45 the harm.

46 b. A claim under this act shall not be brought more than one year

1 after the defendant distributes, dispenses, or possesses with intent to
2 distribute, the controlled dangerous substance or more than one year
3 after the defendant is convicted of a crime involving controlled
4 dangerous substances, whichever is the later.

5

6 15. On motion by a governmental agency involved in an
7 investigation or prosecution involving a controlled dangerous
8 substance, an action brought under this act shall be stayed until the
9 completion of any underlying criminal investigation or prosecution.

10

11 16. No cause of action shall arise based on any act by a defendant
12 which occurred prior to the effective date of this act.

13

14 17. This act shall take effect immediately.

P.L. 2001, CHAPTER 114, *approved June 26, 2001*
Senate Bill No. 621 (*First Reprint*)

1 AN ACT concerning civil actions against drug dealers and
2 supplementing Title 2C of the New Jersey Statutes.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. This act shall be known and may be cited as the "Drug Dealer
8 Liability Act."

9

10 2. The Legislature finds and declares:

11 a. Although the criminal justice system is an important weapon in
12 the battle against controlled dangerous substances, the civil justice
13 system can and must also be used. The civil justice system can provide
14 an avenue of compensation for those who have suffered harm as a
15 result of the marketing and distribution of controlled dangerous
16 substances. The persons who have joined the marketing of controlled
17 dangerous substances should bear the cost of the harm caused by that
18 market in the community.

19 b. The threat of liability under this act serves as an additional
20 deterrent to a recognizable segment of the network for marketing
21 controlled dangerous substances. Because of this threat, a person who
22 has assets unrelated to the sale of controlled dangerous substances,
23 who markets controlled dangerous substances at the workplace, who
24 encourages friends to become users, is likely to decide that the added
25 cost of entering the market is not worth the benefit. This is
26 particularly true for a first-time, casual dealer who has not yet made
27 substantial profits.

28 c. This act is intended to provide a mechanism whereby the costs
29 of the injuries caused by illegal drug use will be borne by those who
30 benefit from illegal drug dealing.

31 d. This act imposes liability against all participants in the marketing
32 of controlled dangerous substances, including small dealers,
33 particularly those in the workplace, who are not usually the focus of
34 criminal investigations. Small dealers increase the number of users and
35 ultimately are the people who become large dealers. It is these small
36 dealers who are most likely to be deterred by the threat of liability.

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly floor amendments adopted March 8, 2001.

1 3. As used in this act:

2 a. "Marketing of controlled dangerous substances" means the illegal
3 distributing, dispensing, or possessing with intent to distribute, a
4 specified controlled dangerous substance.

5 b. "Individual user of controlled dangerous substance" means the
6 individual whose illegal use of a specified controlled dangerous
7 substance is the basis of an action brought under this act.

8 c. "Level 1 offense" means:

9 (1) possessing with intent to distribute less than four ounces of a
10 specified controlled dangerous substance as defined in this section;

11 (2) distributing or dispensing less than one ounce of a specified
12 controlled dangerous substance as defined in this section;

13 (3) possessing with intent to distribute 25 or more but less than 50
14 marijuana plants;

15 (4) possessing with intent to distribute less than four pounds of
16 marijuana, or

17 (5) distributing or dispensing more than 28.5 grams of marijuana.

18 d. "Level 2 offense" means:

19 (1) possessing with intent to distribute four ounces or more but
20 less than eight ounces of a specified controlled dangerous substance
21 as defined in this section;

22 (2) distributing or dispensing one ounce or more but less than two
23 ounces of a specified controlled dangerous substance as defined in this
24 section;

25 (3) possessing with intent to distribute 50 or more but less than 75
26 marijuana plants;

27 (4) possessing with intent to distribute four pounds or more but
28 less than eight pounds of marijuana, or

29 (5) distributing or dispensing more than one pound but less than
30 five pounds of marijuana.

31 e. "Level 3 offense" means:

32 (1) possessing with intent to distribute eight ounces or more but
33 less than 16 ounces of a specified controlled dangerous substance as
34 defined in this section;

35 (2) distributing or dispensing two ounces or more but less than
36 four ounces of a specified controlled dangerous substance as defined
37 in this section;

38 (3) possessing with intent to distribute 75 or more but less than
39 100 marijuana plants;

40 (4) possessing with intent to distribute eight pounds or more but
41 less than 16 pounds of marijuana, or

42 (5) distributing or dispensing more than five pounds but less than
43 10 pounds of marijuana.

44 f. "Level 4 offense" means:

45 (1) possessing with intent to distribute 16 ounces or more of a
46 specified controlled dangerous substance as defined in this section;

1 (2) distributing or dispensing four ounces or more of a specified
2 controlled dangerous substance as defined in this section;

3 (3) possessing with intent to distribute 100 or more marijuana
4 plants;

5 (4) possessing with intent to distribute 16 pounds or more of
6 marijuana, or

7 (5) distributing or dispensing more than 10 pounds of marijuana.

8 g. "Participate in the illegal marketing of controlled dangerous
9 substances" means to transport, import into this State, distribute,
10 dispense, sell, possess with intent to distribute, or offer to distribute
11 a controlled dangerous substance, in violation of any of the provisions
12 of chapter 35 of Title 2C of the New Jersey Statutes. "Participate in
13 the marketing of controlled dangerous substances" does not include
14 the purchase or receipt of a controlled dangerous substance for
15 personal use only.

16 h. "Person" means any natural person, association, partnership,
17 corporation or other entity.

18 i. "Period of illegal use" means, in relation to the individual user of
19 a controlled dangerous substance, the time of the individual's first
20 illegal use of a controlled dangerous substance to the accrual of the
21 cause of action.

22 j. "Place of illegal activity" means, in relation to the individual user
23 of a specified controlled dangerous substance, each county in which
24 the individual illegally possess or uses a specified controlled dangerous
25 substance.

26 k. "Place of participation" means, in relation to a defendant in an
27 action brought under this act, each county in which the defendant
28 participates in the marketing of controlled dangerous substances.

29 l. "Specified controlled dangerous substance" means heroin,
30 cocaine, lysergic acid diethylamide, phencyclidine, methamphetamine,
31 phenyl-2-propanone (P2P) and any other controlled dangerous
32 substance specified under the provisions of N.J.S.2C:35-5 as being
33 unlawful to manufacture, distribute, or dispense, or to possess or have
34 under a person's control with intent to manufacture, distribute or
35 dispense.

36

37 4. A person who knowingly participates in the illegal marketing of
38 controlled dangerous substances within this State is liable for damages,
39 as provided in this act, for injury resulting from an individual's illegal
40 use of a controlled dangerous substance.

41

42 5. a. Any of the following persons may bring an action for
43 damages caused by an individual's illegal use of a controlled dangerous
44 substance:

45 (1) A parent, legal guardian, child, spouse, or sibling of the
46 controlled dangerous substance user.

1 (2) An individual who was exposed to a controlled dangerous
2 substance in utero.

3 (3) An employer of the controlled dangerous substance user. (4)
4 A medical facility, insurer, employer, or other nongovernmental entity
5 that funded a drug treatment program or employee assistance program
6 for the controlled dangerous substance user or that otherwise
7 expended money on behalf of the controlled dangerous substance user.

8 (5) A person injured as a result of the reckless or negligent actions
9 of an individual user of a controlled dangerous substance.

10 No public entity, and no public agency other than a public hospital,
11 shall have a cause of action under this act.

12 b. A person entitled to bring an action under this act may seek
13 damages against:

14 (1) A person who ¹illegally¹ distributed or dispensed a controlled
15 dangerous substance to the individual user of the controlled dangerous
16 substance; or

17 (2) A person who knowingly participated in the ¹illegal¹ marketing
18 of controlled dangerous substances, if all of the following apply:

19 (a) The defendant's place of participation is situated in the same
20 county as the individual user's place of illegal activity;

21 (b) The defendant participated in the marketing of the same type
22 of controlled dangerous substances as those used by the individual
23 user;

24 (c) The defendant was previously convicted of an offense in the
25 State of New Jersey for that type of controlled dangerous substance;
26 and

27 (d) The defendant participated in the marketing of controlled
28 dangerous substances at any time during the period the individual user
29 unlawfully used the controlled dangerous substance.

30 c. A person entitled to bring an action under this section may
31 recover all of the following damages:

32 (1) Economic damages, including, but not limited to, the cost of
33 treatment and rehabilitation, medical expenses, loss of economic or
34 educational potential, loss of productivity, absenteeism, support
35 expenses, accidents or injury, and any other pecuniary loss proximately
36 caused by the use of a controlled dangerous substance.

37 (2) Noneconomic damages, including but not limited to physical
38 and emotional pain, suffering, physical impairment, physical
39 impairment, emotional distress, disfigurement, loss of enjoyment, loss
40 of companionship, services and consortium, and other nonpecuniary
41 losses proximately caused by an individual's use of a controlled
42 dangerous substance.

43 (3) Punitive damages.

44 (4) Reasonable attorney fees.

45 (5) Costs of suit, including, but not limited to, reasonable expenses
46 for expert testimony.

1 6. a. An individual user of a controlled dangerous substance may
2 bring an action for damages caused by the use of a controlled
3 dangerous substance only if all of the following conditions are met:

4 (1) The individual personally discloses to narcotics enforcement
5 authorities all of the information known to the individual regarding all
6 that individual's sources of controlled dangerous substances.

7 (2) The individual has not used a controlled dangerous substance
8 within the 30 days before filing the action.

9 (3) The individual continues to remain free of the use of an illegal
10 controlled substance throughout the pendency of the action.

11 b. An individual user entitled to bring an action under this section
12 may seek damages only from a person who transported, imported into
13 this State, distributed, dispensed, sold, possessed with intent to
14 distribute, or offered to distribute, in violation of any of the provisions
15 of chapter 35 of Title 2C of the New Jersey Statutes, the controlled
16 dangerous substance actually used by the individual user of a
17 controlled dangerous substance.

18 c. An individual user entitled to bring an action under this section
19 may recover only the following damages:

20 (1) Economic damages, including, but not limited to, the cost of
21 treatment, rehabilitation and medical expenses, loss of economic or
22 educational potential, loss of productivity, absenteeism, accidents or
23 injury, and any other pecuniary loss proximately caused by the person's
24 use of a controlled dangerous substance.

25 (2) Reasonable attorney fees.

26 (3) Costs of suit, including, but not limited to, reasonable expenses
27 for expert testimony.

28

29 7. a. A third party shall not pay damages awarded under this act,
30 or provide a defense or money for a defense, on behalf of an insured
31 under a contract of insurance or indemnification.

32 b. A cause of action authorized pursuant to this act may not be
33 assigned, either expressly, by subrogation, or by any other means,
34 directly or indirectly, to any public or publicly funded agency or
35 institution.

36

37 8. A person whose participation in the marketing of controlled
38 dangerous substances is grounds for liability pursuant to this act shall
39 be rebuttably presumed to be liable for damages incurred by the
40 plaintiff in the following percentages:

41 a. For a level 1 offense, 25 percent of the damages;

42 b. For a level 2 offense, 50 percent of the damages;

43 c. For a level 3 offense, 75 percent of the damages; and

44 d. For a level 4 offense, 100 percent of the damages.

45

46 9. a. Two or more persons may join in one action under this act as

1 plaintiffs if their respective actions have at least one market for
2 controlled dangerous substances in common and if any portion of the
3 period of use of a controlled dangerous substance overlaps with the
4 period of use of a controlled dangerous substance for every other
5 plaintiff.

6 b. Two or more persons may be joined in one action under this act
7 as defendants if those persons are liable to at least one plaintiff.

8

9 10. a. An action by an individual user of a controlled dangerous
10 substance is governed by the principles of comparative responsibility.
11 Comparative responsibility attributed to an individual user does not
12 bar the user's recovery but diminishes the award of damages
13 proportionately, according to the measure of responsibility attributed
14 to the user. The burden of proving comparative responsibility is on
15 the defendant, who shall prove comparative responsibility by clear and
16 convincing evidence.

17 b. Comparative responsibility shall not be attributed to a plaintiff
18 who is not an individual user of a controlled substance, unless that
19 plaintiff knowingly gave the individual user money for the purchase
20 of the controlled dangerous substance.

21

22 11. A person subject to liability under this act has a right of action
23 for contribution against another person subject to liability under this
24 act. Contribution may be enforced either in the original action or by
25 a separate action brought for that purpose. A plaintiff may seek
26 recovery in accordance with this act and other laws against a person
27 whom a defendant has asserted a right of contribution.

28

29 12. a. Proof of liability in an action brought under this act shall be
30 shown by clear and convincing evidence.

31 b. A person against whom recovery is sought who has been
32 convicted of a violation of N.J.S.2C:35-5, Manufacturing, Distributing
33 or Dispensing, or an equivalent offense under federal law or the law
34 of any other state, is estopped from denying illegal participation in the
35 market for controlled dangerous substances. If such conviction was
36 based upon the same type of controlled dangerous substance as that
37 used by the individual user, the conviction also constitutes prima facie
38 evidence of the person's participation in the marketing of controlled
39 dangerous substance user pursuant to this act.

40 c. The absence of a criminal conviction for a violation of
41 N.J.S.2C:35-5 or an equivalent offense under federal law or the law of
42 any other state does not bar recovery by a plaintiff bringing suit
43 pursuant to ¹subsection b. of¹ section 5 of this act.

1 13. A plaintiff under this act may request an ex parte prejudgment
2 attachment order from the court against all assets of a defendant
3 sufficient to satisfy a potential award. ¹Any claim of the State
4 authorized pursuant to chapter 35A and 64 of Title 2C of the New
5 Jersey Statutes shall have priority over an order issued pursuant to this
6 section.¹

7
8 14. a. A cause of action accrues under this act when a person has
9 reason to know of the harm from use of a controlled dangerous
10 substance that is the basis for the cause of action and has reason to
11 know that the use of a controlled dangerous substance is the cause of
12 the harm.

13 b. ¹[A] Except as provided in subsection a. of this section, a¹
14 claim under this act shall not be brought more than one year after the
15 defendant distributes, dispenses, or possesses with intent to distribute,
16 the controlled dangerous substance or more than one year after the
17 defendant is convicted of a crime involving controlled dangerous
18 substances, whichever is the later.

19
20 15. On motion by a governmental agency involved in an
21 investigation or prosecution involving a controlled dangerous
22 substance, an action brought under this act shall be stayed until the
23 completion of any underlying criminal investigation or prosecution.

24
25 ¹16. Any judgment resulting from a cause of action brought
26 pursuant to this act shall be satisfied only after the satisfaction of any
27 assessment, fine, fee, penalty or restitution imposed by law and
28 enumerated in section 13 of P.L. 1991, c.329 (2C:46-4.1).¹

29
30 ¹[16.] 17.¹ No cause of action shall arise based on any act by a
31 defendant which occurred prior to the effective date of this act.

32
33 ¹[17.] 18.¹ This act shall take effect immediately.

34
35
36
37
38 Establishes civil action against drug dealers.

CHAPTER 114

AN ACT concerning civil actions against drug dealers and supplementing Title 2C of the New Jersey Statutes.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

C.2C:35B-1 Short title.

1. This act shall be known and may be cited as the "Drug Dealer Liability Act."

C.2C:35B-2 Findings, declarations regarding civil actions against drug dealers.

2. The Legislature finds and declares:

- a. Although the criminal justice system is an important weapon in the battle against controlled dangerous substances, the civil justice system can and must also be used. The civil justice system can provide an avenue of compensation for those who have suffered harm as a result of the marketing and distribution of controlled dangerous substances. The persons who have joined the marketing of controlled dangerous substances should bear the cost of the harm caused by that market in the community.

- b. The threat of liability under this act serves as an additional deterrent to a recognizable segment of the network for marketing controlled dangerous substances. Because of this threat, a person who has assets unrelated to the sale of controlled dangerous substances, who markets controlled dangerous substances at the workplace, who encourages friends to become users, is likely to decide that the added cost of entering the market is not worth the benefit. This is particularly true for a first-time, casual dealer who has not yet made substantial profits.

- c. This act is intended to provide a mechanism whereby the costs of the injuries caused by illegal drug use will be borne by those who benefit from illegal drug dealing.

- d. This act imposes liability against all participants in the marketing of controlled dangerous substances, including small dealers, particularly those in the workplace, who are not usually the focus of criminal investigations. Small dealers increase the number of users and ultimately are the people who become large dealers. It is these small dealers who are most likely to be deterred by the threat of liability.

C.2C:35B-3 Definitions regarding civil actions against drug dealers.

3. As used in this act:

- a. "Marketing of controlled dangerous substances" means the illegal distributing, dispensing, or possessing with intent to distribute, a specified controlled dangerous substance.

- b. "Individual user of controlled dangerous substance" means the individual whose illegal use of a specified controlled dangerous substance is the basis of an action brought under this act.

- c. "Level 1 offense" means:

- (1) possessing with intent to distribute less than four ounces of a specified controlled dangerous substance as defined in this section;

- (2) distributing or dispensing less than one ounce of a specified controlled dangerous substance as defined in this section;

- (3) possessing with intent to distribute 25 or more but less than 50 marijuana plants;

- (4) possessing with intent to distribute less than four pounds of marijuana, or

- (5) distributing or dispensing more than 28.5 grams of marijuana.

- d. "Level 2 offense" means:

- (1) possessing with intent to distribute four ounces or more but less than eight ounces of a specified controlled dangerous substance as defined in this section;

- (2) distributing or dispensing one ounce or more but less than two ounces of a specified controlled dangerous substance as defined in this section;

- (3) possessing with intent to distribute 50 or more but less than 75 marijuana plants;

- (4) possessing with intent to distribute four pounds or more but less than eight pounds of marijuana, or

- (5) distributing or dispensing more than one pound but less than five pounds of marijuana.

- e. "Level 3 offense" means:

- (1) possessing with intent to distribute eight ounces or more but less than 16 ounces of a specified controlled dangerous substance as defined in this section;

- (2) distributing or dispensing two ounces or more but less than four ounces of a specified

controlled dangerous substance as defined in this section;

(3) possessing with intent to distribute 75 or more but less than 100 marijuana plants;

(4) possessing with intent to distribute eight pounds or more but less than 16 pounds of marijuana, or

(5) distributing or dispensing more than five pounds but less than 10 pounds of marijuana.

f. "Level 4 offense" means:

(1) possessing with intent to distribute 16 ounces or more of a specified controlled dangerous substance as defined in this section;

(2) distributing or dispensing four ounces or more of a specified controlled dangerous substance as defined in this section;

(3) possessing with intent to distribute 100 or more marijuana plants;

(4) possessing with intent to distribute 16 pounds or more of marijuana, or

(5) distributing or dispensing more than 10 pounds of marijuana.

g. "Participate in the illegal marketing of controlled dangerous substances" means to transport, import into this State, distribute, dispense, sell, possess with intent to distribute, or offer to distribute a controlled dangerous substance, in violation of any of the provisions of chapter 35 of Title 2C of the New Jersey Statutes. "Participate in the marketing of controlled dangerous substances" does not include the purchase or receipt of a controlled dangerous substance for personal use only.

h. "Person" means any natural person, association, partnership, corporation or other entity.

i. "Period of illegal use" means, in relation to the individual user of a controlled dangerous substance, the time of the individual's first illegal use of a controlled dangerous substance to the accrual of the cause of action.

j. "Place of illegal activity" means, in relation to the individual user of a specified controlled dangerous substance, each county in which the individual illegally possess or uses a specified controlled dangerous substance.

k. "Place of participation" means, in relation to a defendant in an action brought under this act, each county in which the defendant participates in the marketing of controlled dangerous substances.

l. "Specified controlled dangerous substance" means heroin, cocaine, lysergic acid diethylamide, phencyclidine, methamphetamine, phenyl-2-propanone (P2P) and any other controlled dangerous substance specified under the provisions of N.J.S.2C:35-5 as being unlawful to manufacture, distribute, or dispense, or to possess or have under a person's control with intent to manufacture, distribute or dispense.

C.2C:35B-4 Liability of illegal marketer of controlled dangerous substances.

4. A person who knowingly participates in the illegal marketing of controlled dangerous substances within this State is liable for damages, as provided in this act, for injury resulting from an individual's illegal use of a controlled dangerous substance.

C.2C:35B-5 Action for damages; plaintiffs, offenses.

5. a. Any of the following persons may bring an action for damages caused by an individual's illegal use of a controlled dangerous substance:

(1) A parent, legal guardian, child, spouse, or sibling of the controlled dangerous substance user.

(2) An individual who was exposed to a controlled dangerous substance in utero.

(3) An employer of the controlled dangerous substance user.

(4) A medical facility, insurer, employer, or other nongovernmental entity that funded a drug treatment program or employee assistance program for the controlled dangerous substance user or that otherwise expended money on behalf of the controlled dangerous substance user.

(5) A person injured as a result of the reckless or negligent actions of an individual user of a controlled dangerous substance.

No public entity, and no public agency other than a public hospital, shall have a cause of action under this act.

b. A person entitled to bring an action under this act may seek damages against:

(1) A person who illegally distributed or dispensed a controlled dangerous substance to the individual user of the controlled dangerous substance; or

(2) A person who knowingly participated in the illegal marketing of controlled dangerous substances, if all of the following apply:

(a) The defendant's place of participation is situated in the same county as the individual user's place of illegal activity;

(b) The defendant participated in the marketing of the same type of controlled dangerous substances as those used by the individual user;

(c) The defendant was previously convicted of an offense in the State of New Jersey for that type of controlled dangerous substance; and

(d) The defendant participated in the marketing of controlled dangerous substances at any time during the period the individual user unlawfully used the controlled dangerous substance.

c. A person entitled to bring an action under this section may recover all of the following damages:

(1) Economic damages, including, but not limited to, the cost of treatment and rehabilitation, medical expenses, loss of economic or educational potential, loss of productivity, absenteeism, support expenses, accidents or injury, and any other pecuniary loss proximately caused by the use of a controlled dangerous substance.

(2) Noneconomic damages, including but not limited to physical and emotional pain, suffering, physical impairment, physical impairment, emotional distress, disfigurement, loss of enjoyment, loss of companionship, services and consortium, and other nonpecuniary losses proximately caused by an individual's use of a controlled dangerous substance.

(3) Punitive damages.

(4) Reasonable attorney fees.

(5) Costs of suit, including, but not limited to, reasonable expenses for expert testimony.

C.2C:35B-6 Controlled dangerous substance individual user; conditions to bring an action.

6. a. An individual user of a controlled dangerous substance may bring an action for damages caused by the use of a controlled dangerous substance only if all of the following conditions are met:

(1) The individual personally discloses to narcotics enforcement authorities all of the information known to the individual regarding all that individual's sources of controlled dangerous substances.

(2) The individual has not used a controlled dangerous substance within the 30 days before filing the action.

(3) The individual continues to remain free of the use of an illegal controlled substance throughout the pendency of the action.

b. An individual user entitled to bring an action under this section may seek damages only from a person who transported, imported into this State, distributed, dispensed, sold, possessed with intent to distribute, or offered to distribute, in violation of any of the provisions of chapter 35 of Title 2C of the New Jersey Statutes, the controlled dangerous substance actually used by the individual user of a controlled dangerous substance.

c. An individual user entitled to bring an action under this section may recover only the following damages:

(1) Economic damages, including, but not limited to, the cost of treatment, rehabilitation and medical expenses, loss of economic or educational potential, loss of productivity, absenteeism, accidents or injury, and any other pecuniary loss proximately caused by the person's use of a controlled dangerous substance.

(2) Reasonable attorney fees.

(3) Costs of suit, including, but not limited to, reasonable expenses for expert testimony.

C.2C:35B-7 No third party damage payments; assignment of cause of action restricted.

7. a. A third party shall not pay damages awarded under this act, or provide a defense or money for a defense, on behalf of an insured under a contract of insurance or indemnification.

b. A cause of action authorized pursuant to this act may not be assigned, either expressly,

by subrogation, or by any other means, directly or indirectly, to any public or publicly funded agency or institution.

C.2C:35B-8 Damage table.

8. A person whose participation in the marketing of controlled dangerous substances is grounds for liability pursuant to this act shall be rebuttably presumed to be liable for damages incurred by the plaintiff in the following percentages:

- a. For a level 1 offense, 25 percent of the damages;
- b. For a level 2 offense, 50 percent of the damages;
- c. For a level 3 offense, 75 percent of the damages; and
- d. For a level 4 offense, 100 percent of the damages.

C.2C:35B-9 Joint actions.

9. a. Two or more persons may join in one action under this act as plaintiffs if their respective actions have at least one market for controlled dangerous substances in common and if any portion of the period of use of a controlled dangerous substance overlaps with the period of use of a controlled dangerous substance for every other plaintiff.

b. Two or more persons may be joined in one action under this act as defendants if those persons are liable to at least one plaintiff.

C.2C:35B-10 Comparative responsibility governing action.

10. a. An action by an individual user of a controlled dangerous substance is governed by the principles of comparative responsibility. Comparative responsibility attributed to an individual user does not bar the user's recovery but diminishes the award of damages proportionately, according to the measure of responsibility attributed to the user. The burden of proving comparative responsibility is on the defendant, who shall prove comparative responsibility by clear and convincing evidence.

b. Comparative responsibility shall not be attributed to a plaintiff who is not an individual user of a controlled substance, unless that plaintiff knowingly gave the individual user money for the purchase of the controlled dangerous substance.

C.2C:35B-11 Right of action for contribution.

11. A person subject to liability under this act has a right of action for contribution against another person subject to liability under this act. Contribution may be enforced either in the original action or by a separate action brought for that purpose. A plaintiff may seek recovery in accordance with this act and other laws against a person whom a defendant has asserted a right of contribution.

C.2C:35B-12 Proof of liability; prima facie evidence.

12. a. Proof of liability in an action brought under this act shall be shown by clear and convincing evidence.

b. A person against whom recovery is sought who has been convicted of a violation of N.J.S.2C:35-5, Manufacturing, Distributing or Dispensing, or an equivalent offense under federal law or the law of any other state, is estopped from denying illegal participation in the market for controlled dangerous substances. If such conviction was based upon the same type of controlled dangerous substance as that used by the individual user, the conviction also constitutes prima facie evidence of the person's participation in the marketing of controlled dangerous substance user pursuant to this act.

c. The absence of a criminal conviction for a violation of N.J.S.2C:35-5 or an equivalent offense under federal law or the law of any other state does not bar recovery by a plaintiff bringing suit pursuant to subsection b. of section 5 of this act.

C.2C:35B-13 Ex parte prejudgment attachment order.

13. A plaintiff under this act may request an ex parte prejudgment attachment order from the court against all assets of a defendant sufficient to satisfy a potential award. Any claim of the State authorized pursuant to chapter 35A and 64 of Title 2C of the New Jersey Statutes shall have priority over an order issued pursuant to this section.

C.2C:35B-14 Cause of action, accrual; statute of limitations on claim.

14. a. A cause of action accrues under this act when a person has reason to know of the harm from use of a controlled dangerous substance that is the basis for the cause of action and has reason to know that the use of a controlled dangerous substance is the cause of the harm.

b. Except as provided in subsection a. of this section, a claim under this act shall not be brought more than one year after the defendant distributes, dispenses, or possesses with intent to distribute, the controlled dangerous substance or more than one year after the defendant is convicted of a crime involving controlled dangerous substances, whichever is the later.

C.2C:35B-15 Stay of action pending criminal action.

15. On motion by a governmental agency involved in an investigation or prosecution involving a controlled dangerous substance, an action brought under this act shall be stayed until the completion of any underlying criminal investigation or prosecution.

C.2C:35B-16 Satisfaction of judgment after other fines, penalties, etc.

16. Any judgment resulting from a cause of action brought pursuant to this act shall be satisfied only after the satisfaction of any assessment, fine, fee, penalty or restitution imposed by law and enumerated in section 13 of P.L. 1991, c.329 (2C:46-4.1).

C.2C:35B-17 Nonapplicability of act.

17. No cause of action shall arise based on any act by a defendant which occurred prior to the effective date of this act.

18. This act shall take effect immediately.

Approved June 26, 2001.

PO BOX 004
TRENTON, NJ 08625

Office of the Governor
NEWS RELEASE

CONTACT: Rae Hutton
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RELEASE: June 27 , 2001

Acting Governor Donald T. DiFrancesco has signed the following legislation:

S-621, sponsored by Senators John Matheussen (R-Camden/Gloucester), Norman Robertson (Essex/Passaic) and Anthony Bucco (R-Morris) and Assemblymembers John Kelly (R-Bergen/Essex/Passaic) and Arline Friscia (D-Middlesex), allows parents, children, spouses and siblings of illegal drug users, as well as employers of illegal drug users, medical facilities, insurers and persons injured by the drug users' actions to sue drug dealers for civil damages.

S-647, sponsored by Senator Joseph Kyriillos (R-Middlesex/Monmouth) and Assemblyman Joseph Azzolina (R-Middlesex/Monmouth) and Guy Gregg (R-Sussex/Hunterdon/Morris) permits the Director of the Division of Alcoholic Beverage Control to issue a special auction permit to a nonprofit organization operating solely for civic, religious, education, charitable, fraternal, social or recreational purposes.

The permit will cost \$100 and would entitle the nonprofit organization to sell at auction alcoholic beverages donated to it by a licensee.

S-1382, sponsored by Senator Robert Martin (R-Essex/Morris/Passaic) and Assemblymen Wilfredo Caraballo (D-Essex) and Kip Bateman (R-Morris/Somerset), revises rules concerning secured transactions by replacing Chapter 9 of the Uniform Commercial Code (UCC) with revised Chapter 9, as well as, conforming amendments to Chapters 1,2,2A,4,5,7 and 8 of the UCC.

S-2123, sponsored by Senator Raymond Lesniak (D-Union) and Assemblymen Neil Cohen(D-Union) and Joseph Impreveduto (D-Bergen/Hudson), increases the term of office of the mayor and the members of council from two years to four years in municipalities. Provides for a transitional three-year term of office for the mayor and members of council elected at the 2002 general election.

This bill also alters the term of office of mayor and member so council from three years to four years in towns.

A-1325, sponsored by Senator William Schluter (R-Warren/Hunterdon/Mercer) and Assemblymembers Richard Bagger (R-Middlesex/Morris/Somerset/Union) and the late Alan Augustine (R-Middlesex/Morris/Somerset/Union), allows a municipality or county to install pedestrian crossing right-of-way signs at a marked or unmarked crosswalk or at an intersection.

A-1342, sponsored by late Assemblyman Alan Augustine (R-Middlesex/Morris/Somerset/Union), provides that, as a fifth option, a Teachers' Pension and Annuity Fund (TPAF) or Public Employees' Retirement System (PERS) member may choose a retirement allowance actuarially reduced to provide to a beneficiary an allowance equivalent to the full amount, three-quarters, one-half or one-quarter of that reduced allowance, but if the beneficiary dies before the retiree, the retiree's allowance will increase to a maximum amount.

A-2185, sponsored by Senator Louis Bassano (R-Essex/Union) and John Singer (R-Burlington/Monmouth/Ocean) and Assemblymembers Leonard Lance (R-Warren/Hunterdon/Mercer) and Rose Maria Heck (R-Bergen), appropriates \$28,695,000 from the Developmental Disabilities' Waiting List Reduction and Human Services Facilities Construction Fund for the Department of Human Services. This money will be used for various projects within the divisions, including reducing the community services waiting list.

A-2209, sponsored by Senators Jack Sinagra (R-Middlesex) and Joseph Vitale (D-Middlesex) and Assemblymembers Carol Murphy (R-Essex/Morris/Passaic) and Samuel Thompson (R-Middlesex/Monmouth), provides that the period for which eligibility for Medicaid and KidCare benefits is determined shall be the maximum permitted under federal law, currently 12 months.

A-2449, sponsored by Assemblymen Michael Arnone (R-Monmouth) and Joseph Azzolina (R-Middlesex/Monmouth), permits sewerage authority or a utilities authority to rename itself as a "water reclamation authority" to more accurately reflect its activities and purposes.

A-2523, sponsored by Senators William Gormley (R-Atlantic) and Edward O'Connor (D-Hudson) and Assemblymen James Holzapfel (R-Monmouth/Ocean) and Peter Barnes (D-Middlesex), increases the penalty for persons who produce and sell false motor vehicle identification cards from a crime of the fourth degree to a crime of the third degree which is punishable by imprisonment for three to five years, a fine of up to \$15,000, or both.

A-3622, sponsored by Senators Walter Kavanaugh (R-Morris/Somerset) and Raymond Lesniak (D-Union) and Assemblymen John Wisniewski (D-Middlesex) and Samuel Thompson (R-Middlesex/Monmouth), provides that for the year 2001, 1) the day on which members of the State, county or municipal committee of a political party will take office, and the day on which the terms of members previously elected to each such committee will terminate, will be the day immediately following the day of the primary election for the general election and 2) the holding of the annual meeting of the State, county and municipal committees of a political party will occur no earlier than the day immediately following the day of the primary election and no later than the 21st day following such election.